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I N T H E M O N T H O F J U L Y, 1798.

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P R I N T E D B Y J O H N E X S H A W, 98, G R A F T O N - S T R E E T.

1798.



A
R E P O R T
OF THE
P R O C E E D I N G S
IN
CASES OF HIGH TREASON.

SPECIAL COMMISSION.

IN the month of *May*, 1798, several persons were apprehended in *Dublin* upon charges of High-Treason, and shortly afterwards, an act of parliament was passed, empowering Commissioners of *Oyer and Terminer* for the county and city of *Dublin*, to sit in term time.

Pursuant to this act, a Commission of *Oyer and Terminer* for the county and city of *Dublin* passed the Great Seal, in *Trinity* term, 1798. It was directed to *Lord CARLETON*, Chief Justice of the *Common Pleas*; *ALEXANDER CROOKSHANK*, Esq. Second Justice of the said court; *TANKERVILLE CHAMBERLAIN*, Esq. Third Justice of the *King's Bench*; *MICHAEL SMITH*, and *DENIS GEORGE*, Esqrs. Third and Fourth Barons of the *Exchequer*; and *ROBERT DAY*, Esq. Fourth Justice of the *King's Bench*; appointing

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ing them, or any one or more of them, Justices and Commissioners of *Oyer* and *Terminer* within the county and city of *Dublin*, to hear and determine all treasons, and misprisions of treason, murders and manslaughters, in said counties or either of them.

Under this Commission, the Court was opened at the Sessions House in *Green-street*, on the 11th day of *June*, 1798, when it was adjourned for a fortnight, on account (as it was supposed) of the situation of things, *viz.* a rebellion then actually raging, and many of the citizens, likely to be called as Jurors, serving upon military duty.

On *Monday*, the 25th of *June*, the Court sat again, when the Sheriffs of the city and county of *Dublin* were informed, that Grand Juries for their respective counties would be wanted next day.

On *Tuesday*, 26th *June*, the Court sat, when the Grand Juries were sworn, to whom Lord CARLETON, Chief Justice of the *Common Pleas*, gave a charge; after which bills of indictment for High-Treason were found against *Henry Sheares*, and *John Sheares*, Esqrs. barristers, *John McCann*, gentleman, *Samuel Neilson*, printer, *William-Michael Byrne*, gentleman, and *Oliver Bond*, merchant.

These persons were brought into Court, informed that bills of indictment were found against them, and desired to name such counsel and agents as they chose to be assigned to them.

Counsel and agents were accordingly named by all the prisoners, except *Samuel Neilson*, who said, he would not name any counsel.

Counsel for the Crown.	Counsel for <i>Henry Sheares</i> .
Mr. Solicitor General,	Mr. Curran, { Assigned.
Mr. Prime Serjeant,	Mr. Plunket, {
Mr. Saurin,	Counsel for <i>John Sheares</i> .
Mr. O'Grady,	Mr. Curran, { Assigned.
Mr. Mayne,	Mr. McNally, {
Mr. Webber,	Mr. Orr, { Assistant.
Mr. Ridgeway.	Mr. Finlay, {
Agent.	Agent.
Mr. Kemmis.	Mr. A. Fitzgerald.

Counsel

Counsel for *John M'Cann.*

Mr. Curran,

Mr. M'Nally.

Counsel for *Oliver Bond.*

Mr. Curran,

Mr. Ponsonby.

Agent.

Mr. Jas. Johnston.

Counsel for *William-Michael**Byrne.*

Mr. M'Nally,

Mr. Bushe.

Agent.

Mr. Crawford.

The Court then adjourned to *Wednesday* the 4th of *July*, 1798.

Wednesday, 4th *July*, 1798.

Judges present: - Right Hon. *Lord CARLETON*, Hon. *ALEXANDER CROOKSHANK*, Hon. *MICHAEL SMITH*, Hon. *DENIS GEORGE*, Hon. *ROBERT DAY*.

Henry Sheares, and *John Sheares*, were brought to the bar, and arraigned upon the following indictment:—

County of the City of } “ THE Jurors of our Lord the
Dublin, to wit. } King upon their oath present and
 lay, that *Henry Sheares*, late of *Baggot-street*, in the coun-
 ty of the city of *Dublin*, Esquire, and *John Sheares*, late
 of *Baggot-street* aforesaid, in the same county, Esquire,
 being subjects of our said Lord the King of this realm of
Ireland, and not having the fear of God in their hearts,
 nor the duty of their allegiance considering, but being
 moved and seduced by the instigation of the devil, as false
 traitors against our said Lord the King, their supreme, true,
 lawful, and undoubted Lord, the cordial love and true, af-
 fection which every subject of our said Lord the King
 should bear towards our said Lord the King, wholly with-
 drawing, and contriving, and with all their strength in-
 tending the peace and common tranquillity of this his
 kingdom of *Ireland* to disturb, and the government of
 our said Lord the King of this his kingdom of *Ireland* to
 subvert, and overturn, and our said Lord the King off and
 from the royal state, title, honour, imperial crown, and
 government of this his kingdom of *Ireland*, to depose
 and deprive, and our said Lord the King to death, and
 final destruction to bring, on the twentieth day of *May*

in the thirty-eighth year of the reign of our said Lord the King, and on divers other days and times as well before as after that day, at the parish of *Saint Michael* the archangel, in the said county of the city of *Dublin*, with force and arms, to wit, with swords, sticks, staves and soforth, falsely, wickedly, and traitorously, did compass, imagine, and intend our said Lord the King then and there their supreme, lawful, and undoubted Lord, off and from his royal state, crown, title, power, and government of this his kingdom of *Ireland* to depose and deprive, and the said Lord the King to kill, and put to death; and that to fulfil and bring to effect their most evil wicked treason and treasonable imaginations, and compassings aforesaid, they, the said *Henry Sheares*, and *John Sheares*, as such false traitors as aforesaid, and with force and arms, on the twentieth day of *May*, in the thirty-eighth year of the reign aforesaid, and on divers other days and times as well before as after, at the parish of *Saint Michael* the archangel, in the said county of the city of *Dublin*, falsely, maliciously, and traitorously did assemble, meet, conspire, agree, and consult between themselves, and together with divers other false traitors, whose names are to said Jurors unknown, to stir up, raise, and levy rebellion, and war against our said Lord the King, within his kingdom of *Ireland*, and to procure great quantities of arms and ammunition, guns, pistols, swords, pikes, gun-powder and shot, for the purpose of the said rebellion, and to procure, and cause great numbers of armed men to rise, and prosecute, and levy war against our said Lord the King, within this kingdom. And further to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassings, and imaginations aforesaid, they the said *Henry Sheares* and *John Sheares*, as such false traitors as aforesaid, with force and arms on the twentieth day of *May*, in the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, in the county of the city of *Dublin* aforesaid, falsely, maliciously, and traitorously, did assemble, meet, conspire, consult, and agree between themselves, and together with divers other false traitors, whose names are to the Jurors aforesaid as yet unknown, to depose, and dethrone the said Lord the King, and him off and from his royal state, authority, and government of this kingdom to deprive, and put. And further to fulfil, perfect, and bring to effect their most evil
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evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said *Henry Sheares*, and *John Sheares*, as such false traitors as aforesaid, with force and arms, on the twentieth of *May*, in the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, in the county of the city of *Dublin* aforesaid, falsely, maliciously, and traitorously, did assemble, meet, conspire, consult, and agree between themselves, and together with divers other false traitors, whose names are to the Jurors aforesaid as yet unknown, to overturn by force the lawful government of this kingdom, and to change by force the constitution of this kingdom. And further to fulfil, perfect, and bring to effect their most evil and wicked treason and treasonable compassings and imaginations aforesaid, they, the said *Henry Sheares*, and *John Sheares*, as such false traitors as aforesaid, with force and arms, on the twentieth day of *May*, in the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, in the county of the city of *Dublin* aforesaid, falsely, maliciously, and traitorously did assemble, meet, conspire, consult, and agree between themselves, and together with divers other false traitors, whose names are to the said Jurors unknown, upon and about the means of raising and making rebellion against the said Lord the King, within this kingdom, and of procuring and providing great quantities of arms and ammunition for that purpose, and of procuring and causing great numbers of armed men to rise, and to prosecute and levy war against the said Lord the King, within this kingdom, and of overturning by force the government of this kingdom, and of changing by force the constitution of this kingdom. And further to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said *Henry Sheares*, and *John Sheares*, as such false traitors as aforesaid, with force and arms, on the twentieth day of *May*, in the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, in the county of the city of *Dublin* aforesaid, falsely, maliciously, and traitorously did assemble, meet, conspire, consult, and agree between themselves, and together with divers other false traitors, whose names are to the said Jurors unknown, upon and about the means of deposing and dethroning the said Lord the King, and him off and from his royal state,
 authority,

authority, and government of this kingdom depriving and putting. And further to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said *Henry Sheares*, and *John Sheares*, as such false traitors as aforesaid, with force and arms, on the twentieth day of *May*, in the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, in the county of the city of *Dublin* aforesaid, falsely, maliciously, and traitorously, with design and intent, by force, violence, and rebellion, to overturn the present government of this kingdom, and with intent by force, violence, and rebellion, to change and alter the constitution of this kingdom, did associate themselves together with, and become members of a party, society, and brotherhood, then and there formed, under the denomination of *United Irishmen*, and then and there together adhering, for the purpose of overturning by force the government of this kingdom, and dethroning, and deposing the said Lord the King. And further to fulfil and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said *Henry Sheares*, and *John Sheares*, and each of them, as such false traitor and traitors as aforesaid, with force and arms, on the twentieth day of *May*, in the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, in the county of the city of *Dublin* aforesaid, falsely, traitorously, and maliciously, did urge, and endeavour to persuade one *John-Warneford Armstrong*, to aid, and assist in raising, and exciting war, and rebellion against our said Lord the King, and did then and there urge, and endeavour to persuade the said *John-Warneford Armstrong* to seduce, and persuade divers soldiers of our said Lord the King, of his regiment of *King's County Militia*, to desert the service of the said Lord the King, and to join in the said rebellion. And further to fulfil and bring into effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said *Henry Sheares*, and *John Sheares*, and each of them, as such false traitor and traitors as aforesaid, with force and arms, on the twentieth day of *May*, in the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, in the county of the city of *Dublin* aforesaid, falsely, traitorously, and maliciously, with intent to depose
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and dethrone the said Lord the King, and him off and from his royal state, and government of this kingdom to deprive, and put, did urge, and endeavour to persuade one *John-Warneford Armstrong* to aid and assist in raising and exciting war, and rebellion against our said Lord the King, and did then and there urge, and endeavour to persuade the said *John-Warneford Armstrong* to seduce and persuade divers soldiers of our said Lord the King, of his regiment of the *King's County Militia*, to desert from the service of the said Lord the King, and to join in the said rebellion. And further to fulfil and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said *Henry Sheares*, and *John Sheares*, and each of them, as such false traitor, and traitors as aforesaid, with force and arms, on the twentieth day of *May*, in the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, and in the county of the city of *Dublin* aforesaid, falsely, traitorously, and maliciously, did urge, and endeavour to persuade the said *John Warneford Armstrong*, who was then and there a Captain in the said Lord the King's regiment of the *King's County Militia*, to desert from the service of the said Lord the King, in order to aid and join in war, and rebellion against the said Lord the King. And further to fulfil and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said *Henry Sheares*, and *John Sheares*, and each of them, as such false traitor and traitors as aforesaid, with force and arms, on the twentieth day of *May*, in the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, in the county of the city of *Dublin* aforesaid, falsely, wickedly, and traitorously made, composed, and formed, and did in writing and figures set down, and put, a plan to be by them and other false traitors, and by an armed force of rebels executed, for the seizing by force and by surprize the camp of troops of the said Lord the King, then being at *Lehaunstown* in the county of *Dublin*, and for seizing by force and surprize the artillery of the Lord the King then being at *Chapelizod* in the same county, and for seizing the city of *Dublin*, together with the Castle of *Dublin*, and the Lord Lieutenant, and his Majesty's Privy Council of this kingdom, and making the said traitors and rebels masters thereof and of them, with intent, that
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the said plan should be carried into effect, and with intent that the said camp, artillery, and city, and the said Castle, Lord Lieutenant, and Privy Council should be seized into the hands, and power of traitors and rebels against the said Lord the king. And further to fulfil, and bring into effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said *Henry Sheares*, and *John Sheares*, and each of them, as such false traitor and traitors as aforesaid, with force and arms, on the twentieth day of *May*, in the the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, in the county of the city of *Dublin* aforesaid, falsely, wickedly, and traitorously, with intent to depose, and dethrone the said Lord the King, and off and from his royal state, and government of this kingdom to deprive, and put, did urge, and endeavour to persuade the said *John Warneford Armstrong*, who was then and there a Captain in the said Lord the King's regiment of the *King's County Militia*, to desert from the service of the said Lord the King, in order to aid, and join in war, and rebellion against the said Lord the King. And further to fulfil and bring into effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said *Henry Sheares*, and *John Sheares*, and each of them, as such false traitors as aforesaid, with force and arms, on the twentieth day of *May*, in the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, in the county of the city of *Dublin* aforesaid, falsely, wickedly, and traitorously, did procure, and obtain, and in their custody and possession have and keep, a certain paper with writings and figures therein, theretofore composed, and prepared, to signify, and represent a plan, for the seizing by force and by surprize the camp of troops of the said Lord the King, then being at *Lehaunstown* in the county of *Dublin*, and for seizing by force and surprize the Artillery of the Lord the King, then being at *Chapelizod* in the same county, and for seizing the city of *Dublin*, together with the Castle of *Dublin*, and the Lord Lieutenant and his Majesty's Privy Council of this kingdom, and making the said traitors and rebels masters thereof, and of them, with intent that the said plan should be carried into effect, and with intent that the said Camp, Artillery, and City, and the said Castle, Lord Lieutenant, and Privy Council should be seized into the

the hands and power of traitors and rebels, against the said Lord the King. And further to fulfil and bring into effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said *Henry Sheares*, and *John Sheares*, and each of them, as such false traitors and traitor as aforesaid, with force and arms, on the twentieth day of *May*, in the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, in the county aforesaid, falsely, wickedly, and traitorously did make, compose, and form, and in writing set down, and put, a certain proclamation, manifesto, and declaration, purporting, amongst other things, to declare that rebellion, and war against the Lord the King, and against the government of this kingdom were commenced, and that the said rebellion and war would soon destroy the government, and purporting among other things to urge, invite, and call forth the people of this kingdom into open array, rebellion, and war against the Lord the King, and the government of this kingdom, with intent, that the said proclamation, manifesto, and declaration should be published, and spread amongst the people of this kingdom, and should incite them to enter into, and continue in rebellion, and war against the said Lord the King. And further to fulfil and bring into effect their most wicked treason, and treasonable compassings and imaginations aforesaid, they, the said *Henry Sheares*, and *John Sheares*, as such false traitors as aforesaid, with force and arms, on the twentieth day of *May*, in the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, in the county of the city of *Dublin* aforesaid, falsely, wickedly, and traitorously did procure, and obtain, and in their custody and possession keep, and have, a certain paper writing, theretofore composed and prepared, to declare, amongst other things, that rebellion and war against the Lord the King and against the government of this kingdom were commenced, and that the said government would soon be destroyed, and to urge, invite, and call forth the people of this kingdom into open array, rebellion, and war against the said Lord the King, and the government of this kingdom, with intent to publish, spread, and circulate the said paper writing, and the purport and matter thereof amongst the people of this kingdom, and with intent to incite the said people to enter into and continue in rebellion against the said Lord the King. And further to fulfil and bring

into effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said *Henry Sheares* and *John Sheares*, as such false traitors as aforesaid, with force and arms, on the twentieth day of *May*, in the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, in the county of the city of *Dublin* aforesaid, falsely, wickedly, and traitorously did cause and procure great numbers of armed men to the number of one thousand men, armed and arrayed in a warlike manner, traitorously to assemble, and appear in arms, to wit, at *Clondalkin* in the county of *Dublin*, and then and there traitorously to ordain, prepare, and levy war against the said Lord the King. And further to fulfil, perfect, and bring to effect their most evil and wicked treason, and treasonable compassings and imaginations aforesaid, they, the said *Henry Sheares* and *John Sheares*, as such false traitors as aforesaid, with force and arms, on the twentieth day of *May*, in the thirty-eighth year of the reign aforesaid, at the parish of *Saint Michael* the archangel, in the county of the city of *Dublin* aforesaid, falsely, maliciously, and traitorously, did assemble, and meet together with divers other false traitors, whose names are to the said Jurors unknown, to take, and receive returns, accounts, numbers, and names of officers, men, and arms, to be employed in raising, and levying war, and rebellion against the said Lord the King within this kingdom, and did then and there take, and receive several returns, accounts, numbers, and names of officers, men and arms to be employed in raising, and levying war and rebellion against the said Lord the King within this kingdom, and did in writing set down the said returns, accounts, numbers, and names, and an account thereof, with intent that the said officers, men, and arms should be employed in raising, and levying the said war and rebellion, against the duty of the allegiance of them the said *Henry Sheares*, and *John Sheares*, against the peace of our said Lord the King, his crown and dignity, and contrary to the form of the statute in that case made and provided. *And the Jurors aforesaid, on their oath aforesaid, further present and say, that an open and public war, on the twentieth day of *May*, in the thirty-eighth year of the reign of our Lord the now King, and long before was, and ever since hitherto, by land and by sea, hath been, and yet is carried on, and prosecuted by the persons exercising the powers of government in *France*,
and

* Second Count.

and the men of *France*, under the government of the said persons, against our most serene, illustrious, and excellent Prince, our said Lord the now King, and that the said *Henry Sheares*, and *John Sheares*, subjects of our said Lord the King of this his realm of *Ireland*, well knowing the premises, and not having the fear of God in their hearts, nor the duty of their allegiance considering, but being moved and seduced by the instigation of the devil, as false traitors of our most serene, illustrious, and excellent Prince *George the Third*, now King of *Great Britain, France and Ireland*, and so forth, and contriving, and with all their strength intending, the peace and common tranquillity of this his kingdom of *Ireland*, to disturb and molest, and the laws, constitution, and government of *Ireland* to change, subvert, and alter, they, the said *Henry Sheares*, and *John Sheares*, on the twentieth day of *May*, in the thirty-eighth year of the reign of our said Lord the King, and on divers other days and times as well before as after that day, with force and arms, that is to say, with swords, sticks, and so forth, at the parish of *Saint Michael* the archangel, in the said county of the city of *Dublin*, unlawfully, falsely, maliciously, and traitorously, were adhering to, aiding, and comforting the persons exercising the powers of government in *France*, and the men of *France*, under the government of the said persons, and then being enemies of our said Lord the King, and so carrying on war against our said Lord the King as aforesaid."

The same overt acts were set forth in support of the second count, with an additional one, viz. the 7th, that they became members of a society of *United Irishmen*, for the purpose of aiding and assisting the *French*.

Clerk of the Crown. How say you, *Henry Sheares*, are you guilty of this treason in manner and form, as you stand indicted and arraigned, or not?

Mr. McNALLY. My Lords, I must entreat your Lordships will indulge the Prisoners with some little time, as their Counsel are not yet come into Court.

Lord CARLETON. If any application be intended to be made to put off their trial, it cannot be made until after the Prisoners have pleaded.

Mr. McNALLY. My Lords, there is a deliberation among the Counsel upon a serious point of law, and until

they come in I cannot give an answer, or determine upon the line of conduct to be pursued.

Lord CARLETON. If there be any ground of demurrer to the indictment, you may file a demurrer. It is the duty of counsel assigned to attend the Court at the hour appointed for its sitting. It is now one hour after the time appointed by the adjournment; if there be any objection which can be taken in this stage of the proceedings, let it be made by the counsel who do attend.

Mr. M'NALLY. It is not an objection in the form of a plea, or a demurrer.

Lord CARLETON. Then in what way can it come?

Mr. M'NALLY. My Lord, if a single hint be mentioned, it may defeat the purpose of the objection. I wish to wait the appearance of the other counsel.

Lord CARLETON. According to my understanding there are but three ways in which objections to an indictment can be made:—By plea, or demurrer, or a motion to quash the indictment. You mention, that your objection is neither in the form of a plea, or demurrer.

Mr. M'NALLY. My Lord, it will come in the form of a motion to quash the indictment.

Lord CARLETON. Then it is not necessary to wait for the other counsel; because I take it to be settled law, that the Court will not quash indictments upon motion on behalf of the Prisoner in cases of this kind, because though every count, or every overt act in the indictment, but one, be bad, yet that one will be sufficient to maintain the indictment.

Mr. M'NALLY. Suppose, my Lord, that the point went to shew, that the whole proceedings were *coram non judice*?

Lord CARLETON. Then go on, and shew it.

Mr. M'NALLY. My Lord, I would rather wait to consult with the other counsel; I have intimated to them, what struck me upon the subject;—I have not made up my mind upon it; nor can I, until I converse with them.

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(Here a delay of half an hour occurred, after which the Court said, the cause must go on.)

The *Clerk of the Crown* then asked the Prisoner, *Henry Sheares*, whether he was guilty, or not?

Mr. M'NALLY. My Lords, I will state what I humbly conceive to be sufficient ground to quash the whole of the proceedings against these gentlemen, and every part thereof, except the King's Commission. My Lords, it is very lately that the point has occurred; but it is so plain in itself, that it will require very little ability to state, or enforce it.—I take it, my Lords, to be an undeniable principle of law, that *an alien* cannot be a party, either as a Grand Juror, or a Petty Juror, or in any light, but as a witness for the Crown in cases of High-Treason. My Lords, the fact is, as I am instructed, there has been an *alien*, a *French* man born, a prisoner at one part of his life, and never naturalized, called upon the Grand Jury to find a bill of indictment against the Prisoners. When your Lordships read the *Caption* of the indictment, you will find the name, *John Decluzeau*, among the Grand Jury—It may be said, and I anticipate the objection, that this objection should have come by way of challenge. No doubt, a challenge would have set him aside. But the act of the Court is the act of the law, and will not be allowed to injure a man any more than the act of God. The Grand Panel was called over in the absence of the Prisoners; they had no counsel assigned them at that time. If any man had arose and suggested publicly a challenge against the Crown, he would be guilty of a contempt: so it is laid down in the State Trials.—Alienage then being a good cause of challenge, the question is, Does it come too late?—I say, the Prisoners were ignorant of the persons summoned; they were not present when the Grand Jury were sworn, and therefore they lost the benefit of challenge, not by their own default. The law gives a foreigner the privilege of having a Jury, *de medietate linguæ*; six aliens, and six natives: But how is it in treason?—Lord *Coke* says, and he has never been contradicted, that privilege is not allowed in treason, because a foreigner is not a judge of the allegiance due from a subject to the Crown of these realms. The deduction is, that if a foreigner shall not have that privilege, the native shall not have a foreigner upon

upon his Jury. In *Hawk. c. 43. f. 34. tit. Challenge*, two statutes are mentioned, 28 *Ed. 3.* & 9 *Hen. 6.* both previous to the 10 *Hen. 7.* which makes the statute law of *England* antecedent to that time of force in *Ireland*;—these statutes, and some others subsequent in point of time, direct Juries to be formed of *aliens* and *denizens* in particular instances, as where it was presumed, the native might be biased against the alien. The conclusion furnished by these laws is, that as in particular cases, by statute, an *alien* may be upon a Jury, at common law he could not; for if he could at common law, where would be the necessity of these statutes giving a special privilege?—Therefore, I contend, that the proceedings in this case are *coram non judice*; because if the bill of indictment be found by a Grand Jury, upon which there was any one man, not answering the description in the caption, “*good and lawful men,*” competent to find the bill against a subject of the Irish Crown, it is void, and if I do not come too late, I come with force completely sufficient to set aside the proceedings of the Jury.

I am aware, my Lords, that this matter does not appear upon the record, because the name only appears; therefore it cannot operate as error, or in arrest of judgment.—Upon this account, I considered it my duty to communicate this objection to the gentlemen, who act with me, and who, I regret, do not yet appear. I have faithfully stated the law, as it occurred to me, and I have only one observation to make, that so recently did the objection present itself, that I am not prepared to say, in what way the fact is to be established, should the Court be of opinion, that the objection is good. If a challenge had been taken, we know how it could be disposed of, but being deprived of that, as I have already stated, I am at a loss to know how the fact is to be enquired into, whether by collateral issue, or otherwise. I am not ashamed to own my ignorance in this respect.—Perhaps it may come in the shape of a plea, to which the counsel for the Crown may demur.

Lord CARLETON. In the present stage we must refuse this application. It is a motion to quash all the proceedings, except the commission; that would extend to quash even the *precept* under which the Jury was convened, to which I do not find any objection has been made. But the

the object of the motion is to quash the indictment, and the motion is grounded upon matter, not appearing upon the face of the record, but extrinsic to it; not supported by affidavits, but depending merely upon the suggestion of counsel:—Therefore, it is impossible to grant the motion.—There is another reason. In cases of crimes of great magnitude, the Court does not usually quash an indictment at the instance of the Prisoner, but he is put to his demurrer, or his plea. If you have any plea, you must put it in.

Mr. M'NALLY. A plea in abatement will not preclude the Prisoners from pleading over in chief, in case it should be decided against them. I am sorry I have not my friends here to consult with. But, my Lords, I advise a plea in abatement, and the counsel for the Crown may demur.

(The Court waited some time for the plea to be drawn and engrossed. In this interval, Mr. CURRAN and Mr. PLUNKET came into Court, and apologized for their absence, saying, they were informed, that the Court would not sit till eleven o'clock—Lord CARLETON said, the counsel had been misinformed, for the Judges upon the former day expressly mentioned their intention of sitting at half past nine.)

The following plea was then put in and read.

“ And the said *John* and *Henry Sheares* in their proper
 “ persons come, and having heard the indictment aforesaid
 “ read, and protesting, that they are not guilty of the pre-
 “ mises charged in the said indictment, for plea, neverthe-
 “ less say, that they ought not to be compelled to answer
 “ to the said indictment, because they say, that *John De-*
 “ *cluzeau* in the caption of the said indictment mentioned,
 “ was born in the kingdom of *France*, and is an alien,
 “ and is not a natural born and liege subject of our said
 “ Lord the King, and this they are ready to verify;—
 “ wherefore the said *John* and *Henry Sheares*, pray judg-
 “ ment if the Court of our said Lord the King here,
 “ will further proceed on the indictment aforesaid against
 “ them, and that they may be dismissed from the Court
 “ hereof and upon the premises.

“ JOHN P. CURRAN,
 “ LEO. M'NALLY,
 “ W. C. PLUNKET.”

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The plea when originally filed, was the plea of *John Sheares* only;—it was afterwards altered (at the instance of the Prisoner's counsel, and with the consent of the counsel for the Crown) to the form of a plea for both Prisoners.

Mr. PRIME SERJEANT. My Lords, the law requires, in all cases of a dilatory plea, that it should be verified by affidavit. I perfectly recollect, that questions of this kind have arisen before Lord TRACTON, and the decisions upon them gave rise to a law, which provided, that outlawry in a civil action should not be a ground of a plea in abatement to a Grand Jury, and I recollect that affidavits were made in many such cases upon circuit. The statute says, that no dilatory plea shall be received, without an affidavit.

Mr. PLUNKET. An affidavit must be unnecessary in a case of outlawry, because the outlawry must appear by record.

Mr. McNALLY. The plea is received, therefore the objection comes too late. In *Kinloch's* case, there was no affidavit.

Mr. CURRAN. It could not be expected, that the Prisoner should swear to a thing not within his own knowledge. The fact here, namely, the birth of the Grand Juror, must have happened before the Prisoner was born—Affidavits are only necessary in cases of misnomer, or coverture, and such like, where the fact stated in the plea is within the knowledge of the party.

Lord CARLETON. The act of parliament is merely a statute of *jeofails*, and applies only to civil cases.

A replication was filed on the part of the Court, as follows:—

“ And for answer to the said plea of the said *John Sheares* and *Henry Sheares*, JOHN TOLER, Esq. the Solicitor General of our said Lord the King, who in this behalf for the said Lord the King prosecutes, says, the said *John Decluzeau* is not an alien in manner and form as the said *John Sheares* and *Henry Sheares* above allege, and this he prays may be enquired of by the country. And the said JOHN TOLER, the Solicitor General of the Lord the King, who in this behalf prosecutes, protesting, that the said *John Decluzeau* is not an alien, as by the said *John Sheares* and *Henry Sheares* “ above

“ above alleged, yet for further answer to the said plea of
 “ *John Sheares* and *Henry Sheares*, says, that the said
 “ *John Decluzeau* is, and at the time of the caption of the
 “ said judgment was, and is, and then by force of the sta-
 “ tutes in such case made and provided, was, and should
 “ be deemed and adjudged a natural and liege subject of
 “ the said Lord the King, to wit, at the parish of *Saint*
 “ *Michael* the archangel, in the county of the said city of
 “ *Dublin*, and this he is ready to verify, as the Court
 “ shall award. And the said JOHN TOLER, the Solicitor
 “ General of the said Lord the King, who prosecutes as
 “ aforesaid, protesting, that the said *John Decluzeau* is not
 “ an alien, as by the said *John Sheares* and *Henry Sheares*
 “ above alleged, yet for further answer to the said plea of
 “ the said *John Sheares* and *Henry Sheares*, says, that af-
 “ ter the twelfth day of April, in the fourteenth year of
 “ the reign of our late Sovereign Lord *Charles* the Second,
 “ King of *Great Britain* and so forth, to wit, on the first
 “ day of *January*, in the year of our Lord one thousand seven
 “ hundred and seventy, the said *John Decluzeau*, being a
 “ person born out of the dominions of the present Lord the
 “ King, was a person of the Protestant religion, to wit,
 “ at the said parish of *St. Michael* the archangel, in the
 “ said county of the city of *Dublin*, and did then and there,
 “ after his arrival with his stock, substance, and family in
 “ this kingdom, take the oaths of allegiance and supre-
 “ macy, to and of our said Lord the King, and did then
 “ and there, take the oath of abjuration, and make and
 “ subscribe the declaration according to the force of the
 “ statutes in such case made and provided. And this he
 “ is ready to verify, as the Court shall award. And
 “ therefore prays judgment whether the Court will not
 “ proceed upon the said indictment.

“ JOHN TOLER.”

Mr. CURRAN. My Lords, we have looked over this
 replication, and we find that the gentlemen concerned for
 the Crown have thought proper to plead in three ways.
 The subject matter of our plea in abatement came very re-
 cently to our knowledge. To suppose that an *alien* had
 been upon the Grand Jury finding a bill of indictment in-
 volving the duty of allegiance was a rare thing—the suspi-
 cion of it came late to our knowledge.—It would have
 been our duty to be prepared had we known it in time—
 But as we did not, and as it is a plea of great novelty, we

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hope

hope the Court will not think it unreasonable to give us time till to-morrow to answer this pleading.

Mr. SOLICITOR GENERAL. My Lords, I must resist this application. If we had applied for time, and procrastinated the trial, upon a plea of great novelty, as the gentlemen say it is, but upon which they came prepared, it would not be extraordinary. But that the counsel for the Prisoners should require time upon a subject, of which they must be supposed to have been conversant, must appear to be singular and unprecedented. The Prisoners have been apprised of their trial many days. When brought up for trial, they tendered a plea; we replied *instante*, and surely, your Lordships will not procrastinate a subject of this nature, "breeding contention in a lingering act."—The Prisoners are themselves considerable lawyers—they have great assistance:—I am glad they have; and I do not wish to weaken, or abridge the privileges of the subject in prosecutions carried on at the suit of the Crown. But from the nature of this proceeding there should be a reasonable degree of expedition. If issue were joined upon the plea, possibly, there might be some foundation to apply for time to procure proof in support of their objection; though I do not say, they would be intitled to it. But as to matter of pleading, they are seeking for indulgence which they do not want. The counsel, who made the objection, stated, that it had been under consideration, and therefore I require *ex debito justitiæ*, that they put in their rejoinder, or demurrer immediately.

Mr. M'NALLY. My Lords, in *Kinloch's* case and in *Hay's* case, *Foster* 21, time was allowed. It is true we have had a copy of the indictment five days; indeed a sixth day was given us by the SOLICITOR GENERAL, who now refuses any further indulgence; but we did not know, that a *French* alien had been upon the Jury till within a few hours. We could not conjecture, that by any accident such a man could be upon the grand panel of the city. This is a full answer to what has been said upon that point. But as to the other, that the administration of justice calls for a summary proceeding, I take it to be a principle, that every indulgence which the sound direction of the Court can grant ought to be given. We therefore hope, that the Court will comply with this application: There is another reason in support of it; the counsel for the Crown state in
their

their replication several acts of parliament; there should be time allowed to enquire into and examine them. Even the Court would require time to look into them; for though the law presumes the Judges to be acquainted with them, yet upon a novel point, suddenly started, the Judges themselves might require time. Therefore on account of the due administration of justice, your Lordships will grant time.

MR. SOLICITOR GENERAL. In all the cases alluded to, the matter of pleading was concluded in one day. That is all I desire. If after the pleadings are filed, the Court require time, I can have no objection.

LORD CARLETON. This plea is put in as a substitute for a challenge, the party not being present at the swearing of the Grand Jury. If he had been present, and had taken a challenge, the subject matter of that challenge must have been instantly enquired into;—without doing any injury to the Prisoner, the same expeditious mode of deciding upon this plea may be very well adopted in this stage of the business. This is a plea tending to delay the course of proceedings in a criminal case. The counsel for the Prisoner admit they had a copy of the indictment and the caption in which the names of the Jury are set forth, upon *Wednesday* se'nnight. The Court will see, that no unnecessary delay intervene upon subjects of this kind, which are of serious consequence. The Prisoners were in possession of the indictment on *Wednesday* se'nnight, when they first acquired a knowledge of the alleged alienage does not appear: Certainly it was not since the Court sat, because one of the counsel came prepared with the objection, though his deference for his colleagues induced him to wish to postpone making the objection, till they came. He avowed, that it was under their consideration; from whence I draw this conclusion, that he should have come ready prepared with it; he should have had it ready drawn; however, we waited for it to be drawn. On the part of the Crown, the objection comes suddenly upon them. On the part of the Prisoner it is an objection of some preparation; therefore his counsel ought to have come forward ready to meet every replication that could be put in to it. As to the authority, so far as it goes, it is decisive against the application; because there, the time granted was not for an

opportunity to put in a pleading, but for the Court to consider of the subject and the arguments after the pleadings had been filed. Therefore there is no ground for the application.

Mr. CURRAN. My Lords, before we rejoin, it may be prudent to consider, whether this replication should not be quashed. There are three distinct matters in the replication, and they are repugnant to one another. One is, that the Juror is *not an alien*:—the second and third contain averments, that he *is an alien*. Clearly, in civil cases, a party cannot plead double matter without the leave of the Court; even the statute which gives that benefit, does not admit it without a special motion, in order that the Court may see, whether the pleas can stand together. But even that holds only in civil cases, and by the authority of an act of parliament. Therefore your Lordships will consider, whether a replication of this kind, consisting of three parts, contradictory and repugnant, ought to be answered.

Lord CARLETON. In civil cases certainly, the right of pleading double arises from the act of parliament.—As to the objection you now make, you must avail yourself of it in some other way. We will not quash the replication upon motion.

The following rejoinder and demurrer were then filed on the part of the Prisoners.

“ And the said *John* and *Henry Sheares*, as to the said
 “ first plea so as above pleaded by his Majesty’s said Soli-
 “ citor, and which he hath prayed may be enquired of by
 “ the country, do the like. And as to the second and
 “ third pleas so as above aforesaid pleaded, the said *John*
 “ and *Henry Sheares* say, that the same and the matters
 “ therein contained are not sufficient in point of law, to
 “ put the said *John* and *Henry Sheares* to answer the said
 “ indictment, and this they are ready to verify, when and
 “ where, and so forth; whereupon they demur in law
 “ thereto, and pray the judgment of the Court of our
 “ said Lord the King, whether they shall be bound to an-
 “ swer to the said indictment.

A. FITZGERALD, Agent. “ JOHN P. CURRAN,
 “ W.C. PLUNKET,
 “ LEO. M’NALLY.”

“ And

“ And the said *John Toler*, the Solicitor General of our
 “ said Lord the King, who for our said Lord the King in
 “ this behalf prosecutes, says, that the second and third
 “ pleas, and the matter therein contained are sufficient in
 “ law to put the said *John Sheares*, and *Henry Sheares*, to
 “ answer to the said indictment, and this he is ready to
 “ verify, and prays judgment of the Court thereupon,
 “ and so forth.

“ JOHN TOLER.”

Mr. CURRAN. My Lords, it is my duty to suggest
 such reasons, as occur to me in support of the demurrer
 filed here on the part of the Prisoners.—My Lords, the
 law of this country has declared, that in order to the con-
 viction of any man, not only of any charge of the higher
 species of criminal offences, but of any criminal charge
 whatsoever, he must be convicted upon the finding of two
 juries; first, of the Grand Jury, who determine upon the
 guilt in one point of view; and secondly, by the corrobora-
 tive finding of the Petty Jury, who establish that guilt in
 a more direct manner; and it is the law of this country,
 that the Jurors, who shall so find, whether upon the grand,
 or whether upon the petty inquest, shall be *probi & legales*
homines omni exceptione majores. They must be open to no
 legal objection of personal incompetence; they must be
 capable of having freehold property; and in order to have
 freehold property, they must not be open to the objection
 of being born under the jurisdiction of a foreign Prince,
 or owing allegiance to any foreign power. Because the
 law of this country, and indeed the law of every country
 in *Europe*, has thought it an indispensable precaution, to
 trust no man with the weight or influence which territorial
 possession may give him contrary to that allegiance, which
 ought to flow from every man having property in the
 country.—This observation is emphatically forcible in
 every branch of the criminal law; but in the law of trea-
 son, it has a degree of force and cogency that fails in
 every inferior class of offence; because the very point to
 be enquired into in treason, is the nature of allegiance.—
 The general nature of allegiance may be pretty clear to
 every man. Every man, however unlearned he may be,
 can easily acquire such a notion of allegiance, whether nat-
 ural and born with him, or whether it be temporary and
 contracted

contracted by emigration into another country—he may acquire a vague, untechnical idea of allegiance for his immediate personal conduct. But I am warranted in saying, that the constitution does not suppose, that any foreigner has any direct idea of allegiance, but what he owes to his original Prince.—The constitution supposes and takes for granted, that no foreigner has such an idea of our peculiar and precise allegiance, as qualifies him to act as a Juror, where that is the question to be enquired into; and I found myself upon this known principle, that though the benignity of the *English* law has in many cases, where strangers are tried, given a Jury, half composed of foreigners and half natives, that benefit is denied to any man accused of treason, for the reason I have stated, because, says Sir *W. Blackstone*, “aliens are very improper judges of the breach of allegiance.”*—A foreigner is a most improper judge of what the allegiance is, which binds an *English* subject to his constitution. And therefore upon that idea of utter incompetency in a stranger, is every foreigner directly removed and repelled from the possibility of exercising a function, that he is supposed utterly unable to discharge. If one *French* man shall be suffered to find a bill of indictment between our Lord the King and his subjects, by a parity of reasoning, may twenty-three men of the same descent be put into the box, with authority to find a bill of indictment.—By the same reason that the Court may communicate with one man, whose language they do not know, may they communicate with twenty-three natives of twenty-three different countries and languages. How far do I mean to carry this?—Thus far:—That every statute, or means by which allegiance may be shaken off, and any kind of benefit or privilege conferred upon an emigrating foreigner, is for ever to be considered by a court of justice with relation to that natural incompetency to perform certain trusts, which is taken for granted and established by the law of *England*. I urge it with this idea;—that whether the privilege is conferred by letters patent, making the foreigner a denizen, or whether by act of parliament, making him as a native subject, the letters patent or act of parliament should be construed *secundum subjectam materiam*, and a court of justice will take care,

* 4 Bl. Com. 352.

that

that no privilege be supposed to be granted incompatible with the original situation of the party to whom, or the constitution of the country in which, it is conferred. Therefore, my Lords, my clients have pleaded, that the bill of indictment to which they have been called upon to answer, has been found, among others, by a foreigner, born under a foreign allegiance, and incapable of exercising the right of a Juror, upon the grand, or the petty inquest. That is the substance of the plea in abatement.—The counsel for the Crown have replied, and we have demurred to the second and third parts of the replication.

My Lords, I take it to be a rule of law, not now to be questioned, that there is a distinction in our statute laws;—some are of a public, some of a private nature. That part of the legislative edict, which is considered as of a public nature, is supposed to be recorded in the breasts of the King's Judges. As the King's Judges, you are the depositories and the records of the public law of the country. But wherever a private indulgence is granted, or a mere personal privilege conferred, the King's Judges are not the depositories of such laws, though enacted with the same publicity; you are not the repositories of deeds or titles which give men franchises or estates, nor of those statutes which ease a man of a disability, or grant him a privilege.—With regard to the individual to whom they relate, they are mere private acts, muniments, or deeds, call them by what name you please; they are to be shewn, as private deeds, to such courts as it may be thought necessary to bring them forward. Therefore if there be any act of parliament by which a man is enabled to say, he has shaken off the disability, which prevented him from intermeddling in the political, or judicial arrangement of the country; if he says he is no longer to be considered as an alien, he must shew that act specially to the Court in his pleading. The particular authority, whether by letters of denization, or act of parliament, must be set forth, that the Court may judge of them—that if it be by act of parliament, the Court may see, whether he comes within the provisions of the act. This replication does no such thing. The second and the third parts were intended to be founded upon the statute of *Charles II.* and also I suppose, upon the subsequent statute made to give it perpetuity,

tuity, with certain additional requisites.* The statute of *Charles* recites, that the kingdom was wasted by the unfortunate

* The following are the statutes upon which the replication was founded and which were referred to in the argument.

14 and 15 *Car. II.* c. 13. recites, that the late intestine troubles, and cruel wars had much despoiled and wasted the kingdom, whereby the trade and commerce thereof was much decayed and lessened for want of merchants, traders, &c.—and then enacts,—“ That all and every
“ person or persons born out of your Majesty’s dominions, of the Protestant religion, and all merchants, traders, and dealers in any goods, wares, or merchandizes, artizans, artificers, or others working, or
“ manufacturing any goods, or commodities, or any mariners, or seamen, who are at present inhabiting within any part of this kingdom;
“ and all others who shall at any time hereafter within the term of
“ seven years from the end of this present parliament, transport his
“ or their stocks and families into any part of this kingdom, with intention, that themselves and children after them will inhabit, reside
“ and abide in some part thereof, shall after his, or their arrival with
“ his or their stock, substance and family, or families within this kingdom, and after his, or their taking the oaths of allegiance and supremacy, to and of our sovereign Lord the King, before the Lord
“ Chancellor, or the Lords Presidents, or Vice presidents of the province of Munster, or Connaught respectively for the time being, or
“ any Judge in his circuit, who are hereby authorized to administer the
“ said oaths unto any such person or persons aforesaid, and thereupon
“ to certify his, or their doing thereof, into his Majesty’s High Court
“ of Chancery, there to remain on record, (be deemed, adjudged and
“ reputed your Majesty’s *LIEGE*, free and natural subject, or subjects of
“ this your Majesty’s kingdom, and be adjudged, reputed and taken in every
“ respect, condition and degree, to all intents, constructions and purposes,
“ your Majesty’s natural and *LIEGE* subjects of this kingdom, as if they
“ and every of them had been or were born within this kingdom of Ireland.”
—And, that they may enjoy all laws, customs, &c. implead and be impleaded, &c. purchase and enjoy lands and goods, &c. by inheritance or otherwise, and may prosecute and defend suits, &c. —Then follows a clause exempting such aliens from payment of excise for household expences or provisions

4 *Geo. I.* c. 9. f. 1. revives the former, so far forth as the same concerns or relates to the encouraging Protestant strangers and makes it perpetual,—save the clause exempting them from the payment of excise.

The second section enacts—“ Provided always, that no person or
“ persons shall have the benefit of the said act, until he, she, or they
“ shall, instead of the oaths of allegiance and supremacy mentioned in
“ the said act, take the several oaths mentioned and appointed to be
“ taken in *Ireland* by an act of parliament made in *England*, in the
“ third year of the reign of the late King William and Queen Mary of
“ ever glorious memory, intituled, *An act for the abrogating the oath of
“ supremacy in Ireland, and appointing other oaths*; being in the same
“ form herein after-mentioned, viz:—“ setting forth the oaths of allegiance

fortunate troubles of that time, and that trade had decreased for want of merchants. After thus stating generally, the grievances which had afflicted the trade and population of the country, and the necessity of encouraging emigration from abroad, it goes on and says, that strangers may be induced to transport themselves and families to replenish the country, if they may be made partakers of the advantages and free exercise of their trades without interruption and disturbance. The grievance was the scarcity of men; the remedy was the encouragement of foreigners to transport themselves, and the encouragement given was such a degree of protection as was necessary to the full exercise of their trades in the dealing, buying and selling, and enjoying the fullest extent of personal security. Therefore it enacts, that all foreigners of the Protestant religion, and all merchants, &c. who shall within the *term of seven years* transport themselves to this country, shall be deemed and reputed a natural born subject, and *may implead and be impleaded, and prosecute and defend suits.* The intention was, to give them protection for the purposes for which they were encouraged to come here; and therefore the statute instead of saying generally, they shall be subjects *to all intents and purposes*, specifically enumerates the privileges they shall enjoy. If the legislature intended to make them subjects *to all intents and purposes*, it had nothing more to

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giance and supremacy, the declaration against transubstantiation, and the oath abjuring the Pretender's title.

19 and 20 Geo. III. c. 29. enacts, " That all foreign merchants, traders, artificers, manufacturers, workmen, seamen, farmers, and others who shall transport him, her, or themselves to settle in any part of this kingdom, shall after his, her, or their arrival within this kingdom, and after his, her, on their taking the following oath (or affirmation, if a quaker) before the Chief Magistrate of any city or town corporate in this kingdom for the time being, who is hereby authorized to administer said oath, and thereupon to certify his, her, or their doing thereof, unto his Majesty's High Court of Chancery, there to remain on record, *be deemed, adjudged and reported* **LIEGE, free and natural subject, or subjects of this kingdom in every respect, condition and degree to all intents, constructions and purposes, as if he, she, or they had been, or were born within this kingdom, any law or statute to the contrary notwithstanding, whilst he, she, or they shall reside within this kingdom** "—Then follows the oath:—

Sect. 2. " Provided always, that no person naturalized by this act shall be enabled to serve in parliament, nor to be of his Majesty's Privy Council, nor to hold any office of trust, civil, or military, in this kingdom."

do than say so.—But not having meant any such thing, the statute is confined to the enumeration of the mere hospitable rights and privileges to be granted to such foreigners, as come here for special purposes. It states, that he may implead and shall be answered unto—that he may prosecute and defend suits. Why go on, and tell a man, who is *to all intents and purposes*, a natural born subject, that he may implead and bring actions?—I say, it is to all intents and purposes absurd, and preposterous. If *all* privileges be granted in the first instance, why mention *particular* parts afterwards?—A man would be esteemed absurd, who, by his grant gave a thing under a general description, and afterwards granted the particular parts. What would be thought of a man who gave another his horse, and then said to the grantee, “I also give you liberty to ride him “when and where you please?”—What was the case here?—The Government of *Ireland* said we want men of skill and industry—we invite you to come over—our intention is, that if you be Protestants, you shall be protected, but you are not to be Judges, or Legislators, or Kings—we make an act of parliament, giving you protection and encouragement to follow the trades for your knowledge in which we invite you.—You are to exercise your trade *as* a natural born subject.—How?—With full power to make a bargain, and enforce it—we invest you with the same power, and you shall have the same benefit as if you were appealing to your own natural forum of public justice.—You shall be here as a *French* man in *Paris*, buying and selling the commodities appertaining to your trade.

Look at another clause in the act of parliament which is said to make a Legislator of this man, or a Juror to pass upon the life and death of a fellow-subject—no, not a fellow-subject—but a stranger.—It says, “you may purchase an estate, and you may enjoy it, without being a “trustee for the Crown.”—Why was that necessary, if he were a subject *to all intents and purposes*?

This statute had continuance for the period of seven years only: That is, it limited the time in which a foreigner might avail himself of its benefits to seven years. The stat. 4 *Geo.* 1. revives it and makes it perpetual—I trust I may say, that whenever an act of parliament is made, giving perpetuity to a former act, no greater force or operation can be given to the latter, than would have been given to the former, had it been declared perpetual at the

the time of its enactment. An act of that kind is merely to cure the defect of continuance; therefore it does no more than is necessary to that end. Then how will it stand? Thus:—that any man, who within seven years after the passing of the act of *Charles II.* performing the requisites there mentioned, shall have the privileges thereby granted, for ever thereafter. The Court would assume the office of Legislation, not of construction, if they inferred, or supplied by intendment, a longer period than seven years:—there is nothing in the subsequent act changing the term of seven years, limited in the former; it is not competent to a court of justice to alter or extend the operation of a statute by the introduction of clauses not to be found in it.—It is the business of the legislature to enact laws; of the Court to expound them.

It is worthy of observation, my Lords, that this subsequent statute has annexed certain explicit conditions to be performed by the person, who is to take the benefit of the preceding act; for it is provided that no person shall have the benefit of the former act, unless he take the several oaths appointed to be taken by the latter; among which is the oath against the Pretender, which is not stated in the replication.

There is a circumstance in the latter act, which with regard to the argument, is extremely strong to shew, that the legislature did not intend to grant the universal franchise and privilege to all intents and purposes. It revives every part of the former, save that part exempting aliens from the payment of excise.—Will it be contended, that an alien should be considered as a natural born subject *to all intents and purposes*, and yet be exempt from the payment of excise? it is absurd, and impossible.

Put it in another point of view. What is an act of naturalization?—It is an encroachment upon the common law rights, which every man born in this country has in it:—those rights are encroached upon and taken away by a stranger. The statute therefore should be construed with the rigour of a penal law. The Court to be sure will see, that the stranger has the full benefit intended for him by the statute; but they will not give him any privilege inconsistent with the rights of the natural born subjects, or incompatible with the fundamental principles of the constitution, into which he is admitted, and I found myself upon this, that after declaring that he shall be considered

as a natural born subject, the act states such privileges only as are necessary to the exercise of trade and the enjoyment of property.

Therefore, it comes back to the observation just now made. Is not any man pleading a statute of naturalization, by which he claims to be considered as a natural born subject, bound to set forth a compliance with all the requisites pointed out by that statute? He is made a native to a certain extent upon complying with certain conditions; is he not bound to state that compliance? Here he has not stated them. But I go further; I say, that every condition mentioned in the statute of *Charles* should be set forth in the second part of the replication; that he came with an intent of settling; that he brought his family and his stock, that he took the oaths before the proper magistrates, and after a minute statement of every fact, he should state the additional oath required by the statute of *Geo. I.*

But, my Lords, a great question remains behind to be decided upon. I know of no case upon it. I do not pretend to say, that the industry of other men may not have discovered a case. But I would not be surprized, if no such case could be found. If since the history of the administration of justice in all its forms in *England*, a stranger had not been found intruding himself into its concerns:—if through the entire history of our courts of justice, an instance was not to be found of the folly of a stranger interfering upon so awful a subject, as the breach of allegiance between a subject and his King. My Lords, I beg leave upon this part to say, that it would be a most formidable thing—that a court of justice would pronounce a determination big with danger if they say, that an alien may find a bill of indictment involving the doctrine of allegiance. It is permitting him to intermeddle in a business, of which he cannot be supposed to have any knowledge. Shall a subject of the *Irish* Crown be charged with a breach of his allegiance upon the saying of a *German*, an *Italian*, a *Frenchman*, or a *Spaniard*? Can any man suppose any thing more monstrous or absurd, than that of a stranger being competent to form an opinion upon the subject. I would not form a supposition upon it. At a time when the generals, the admirals and the captains of *France* are endeavouring to pour their armies upon us, shall we permit their petty detachments to attack us in judicial hostility?

hostility? Shall we sit inactive, and see their skirmishers take off our fellow subjects by explosions in a jury room?

When did this man come into this country? Is the raft upon which he floated now in court? What has he said upon the back of the bill? What understanding had he of it? If he can write more than his own name, and had wrote *ignoramus* upon the back of the indictment, he might have written truly; he might say, he knew nothing of the matter. He says, he is naturalized—I am glad of it—You are welcome to *Ireland*, Sir—You shall have all the privileges of a stranger, independent of the invitation by which you came—If you sell, you shall recover the price of your wares;—you shall enforce the contract—If you purchase an estate, you shall transmit it to your children, if you have any—if not, your devisee shall have it. But you must know, that in this constitution, there are laws binding upon the Court as strongly as upon you:—the statute itself which confers the privileges you enjoy, makes you incapable of discharging offices—Why? Because they go to the fundamentals of the constitution, and belong only to those men who have an interest in that constitution transmitted to them from their ancestors—Therefore, my Lords, the foreigner must be content, he shall be kept apart from the *judicial* functions;—in the extensive words of the act of parliament he shall be kept from “all places of *trust* whatsoever.” If the act had been silent in that part, the court would notwithstanding be bound to say, that, it did not confer the power of filling the high departments of the state.—The alien would still be incapable of sitting in either house of parliament—he would be incapable of advising with the King, or holding any place of constitutional trust whatever. What? Shall it be said, there is no trust in the office of a grand juror?—I do not speak, or think lightly of the sacred office confided to your Lordships of administering justice between the crown and the subject; or between subject and subject:—I do not compare the office of a grand juror to that. But, in the name of God, with regard to the issues of life and death—with regard to the consequences of imputed, or established criminality, what difference is there, in the importance of the constitution, between the *juror* who brings in a verdict, and the *judge* who pronounces upon that verdict, the sentence of the law? Shall it be said, that the former is no place of *trust*? What is the
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the place of trust meant by the statute? It is not merely giving a thing to another or depositing for safe custody—It means *constitutional trust*—the trust of executing given departments in which the highest confidence must be reposed in the man appointed to perform them. It means not the trust of keeping a paltry chattel—it means the awful trust of keeping the secrets of the state, and of the King.—Look at the weight of the obligation imposed upon the juror—look at the enormous extent of the danger, if he violate or disregard it—At a time like the present—a time of war—What, is the trust to be confided to the conscience of a *Frenchman*?—But I am speaking for the lives of my clients, and I do not choose, even here, to state the terms of the trust, lest I might furnish as many hints of mischief, as I am anxious to furnish arguments of defence.—But shall a *Frenchman* at this moment be entrusted with those secrets upon which your sitting upon that Bench may eventually depend?—What, is the enquiry to be made?—Having been a pedlar in the country, is to have the selling of the country, if he be inclined to do so?—Is to have confided to him the secrets of the state?—He may remember to have had a *first* allegiance, that he was *sworn* to it:—He might find Civilians to aid his perfidious logic, and to tell him, that a secret communicated to him by the humanity of the country which received him might be disclosed to the older and better matured allegiance sworn to a former power! He might give up the perfidious use of his conscience to the integrity of the older title. Shall the power of calling upon an *Irishman* to take his trial before an *Irish* Judge, before the country, be left to the broken speech—the *lingua franca* of a stranger coming among you, and saying, “I was naturalized by act of parliament, and I cannot carry on my trade, without dealing in the blood of your citizens.”—He holds up your statute as his protection, and flings it against your liberty, claiming the right of exercising a judicial function, feeling at the same time, the honest love for an older title to allegiance. It is a love which every man ought to feel, and which every subject of this country would feel, if he left this country to-morrow, and were to spend his last hour among the Hottentots of *Africa*. I do trust in God, there is not a man who hears me, who does not feel, that he would carry with him to the remotest part of the globe, the old ties, which bound

bound him to his *original* friends, his country and his King:—I do, as the advocate of my clients, of my country—as the advocate for you, my Lords, whose elevation prevents you from the possibility of being advocates for yourselves—for your children, stand up and rely upon it, that this act of parliament has been confined to a limited operation—it was enacted for a limited purpose, and will not allow this meddling stranger to pass upon the life, fame, or fortune of the gentlemen at the bar—of me, their advocate—of you, their Judges—or of any man in the nation. It is an intrusion not to be borne.

My Lords, you deny him no advantage that strangers ought to have. By extending the statute, you take away a right from a native of the country, and you transfer one to an intermeddling stranger. I do not mean to use him with disrespect; he may be a respectable and worthy man; but whatever he may be, I do, with humble reliance upon the justice of the Court, deprecate the idea of communicating to him that high, awful and tremendous privilege of passing upon life, of expounding the law in cases of treason, it being a fundamental maxim, that strangers will most improperly be called upon to judge of breaches of allegiance between a subject and his sovereign.

Mr. PLUNKET. In truth, my Lords, I should hope, before I am called upon to add any observations to those most powerfully and eloquently urged by my colleague, that the counsel for the Crown would give some hint upon what ground they mean to support their replication.—They have the right of reply; I do not wish to deprive them of that. But I am at a loss how to proceed, unless I follow the ideas thrown out by the gentleman who preceded me, which I should do in language infinitely inferior to his.

Lord CARLETON. Does Mr. M'NALLY mean to add any thing more to what he has said already?

Mr. M'NALLY. My Lord, I do not.

Lord CARLETON. Then there is no objection to hearing the counsel for the Crown?

Mr. SOLICITOR GENERAL. My Lord, I must insist upon my right of reply.

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Lord CARLETON. They do not mean to deprive you of the ultimate right of reply. But it is fair to hear some of you, before they go on further.

Mr. PRIME SERJEANT. My Lords, I feel it my duty, in obedience to the intimation of the Court, and not from any sense of difficulty in the point to offer a few words to your Lordships. The learned counsel for the prisoners has been eloquent in proving what our replication admits, that an alien ought not to be upon the Grand Jury. But an alien naturalized is by law declared to be, *to all intents and purposes* as a free born subject. In the language of the act of parliament, he is to be deemed, adjudged and reported your Majesty's free, *LIEGE, and natural subject in every respect, and degree, to all intents, constructions and purposes.* If it were possible to adopt words of more enabling qualification, I confess they do not occur to my understanding. Your Lordships will see, when I come to call your attention to the other clauses, what the extent and operation of these words have been considered to be, both in *England and Ireland*; because you will find clauses in the statutes of both countries, excluding aliens, who have been naturalized from particular situations. Such was thought to be the general enabling operation of the words, that the legislature in both countries thought it necessary to restrain them, by excluding the persons to whom privileges were granted, from particular offices of trust.

13 *Geo. 2. c. 7. Brit.* enacts that persons born out of his Majesty's allegiance, who shall reside in the colonies of *America* and take certain oaths, shall be deemed natural born subjects; and the 6th section provides, that no person, who shall become a natural born subject by virtue of that act, shall be of the privy council, or a member of either house of parliament, or capable of taking any office of trust in *Great Britain, or Ireland*, civil, or military. It would be ridiculous for the legislature to enact such restrictions, if the act of naturalization had not conferred the right of filling all offices indiscriminately.

20 *Geo. 2. c. 44. Brit.* which naturalizes persons of certain descriptions, performing the requisites, contains the same restrictive provision. 22 *Geo. 2. c. 45. Brit.* which naturalizes persons serving on board certain ships and performing

forming the requisites, contains the same restriction, and the *Irish* ft. 19 and 20 *Geo. 3. c. 19.* provides, that no person naturalized by that act shall be capable of serving in parliament, to be of the privy council, or hold any office of trust, civil, or military.

In opposition then to the construction put upon this law by Mr. CURRAN, I refer to the authority of three legislative declarations by the parliament of *Great Britain*, and one of *Ireland*, expressly intimating, that aliens naturalized would be enabled to enjoy all these offices from the generality of the words naturalizing them. Therefore I think it unnecessary to take up your time upon that point.

Another objection has been made, that we do not state the performance of all the qualifications mentioned in 4 *Geo. 1.* I submit to your Lordships, that we have expressly stated them. The replication states, that after his arrival in this kingdom, he took the oaths of allegiance and supremacy, that he took the oath of abjuration, and subscribed the declaration according to the form of the statutes. There are three oaths and a declaration required by the statutes—they are all stated in the replication. The demurrer admits, that all these oaths have been taken pursuant to the statutes, and even if they were not so minutely stated, you would take them for granted, under an enabling statute, which is referred to. Therefore the objection fails them.

My Lords, speaking in a court of law, and arguing a demurrer, I do not feel it necessary to follow the counsel through all that region of declamation upon imaginary grievances, which if any time they existed, were to be considered by the legislature, and not in a court of law. Your Lordships have the legislative declarations of the effect of the words, if they had not been restricted, and the performance of the requisites is admitted by the demurrer. I did not think it necessary to say a word, but in obedience to the Court, I have said thus much upon the subject.

Mr. PLUNKET. My Lords, after so much has been said, and with such transcendent ability by Mr. CURRAN, I will not consume your time by going through the generality of the argument, but content myself with confining my observations to the point relied upon by Mr. PRIME

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SERJEANT.

SERJEANT. Although the point is now, in terms, admitted, that an alien cannot serve as a juror, yet it may not be unnecessary to refer to an authority. 2 *Hawk.* chap. 25, s. 16. "Every indictment must be found by twelve men at the least, every one of whom ought to be a freeman and a lawful *liege* subject—not an alien"—s. 18. "Outlawry in a grand juror may be pleaded to the indictment"—s. 26 and 28. A person arraigned upon any indictment taken contrary to the purview of the stat. 11 *H.* 4. c. 9. may *plead* such matter in avoidance of the indictment, and also plead over to the felony. "If any one of the Grand Jury who find an indictment be within any one of the exceptions in the statute, he vitiates the whole, though never so many unexceptionable persons joined with him in finding it." And the regular mode of taking advantage of such objection is by plea. When I lay down these positions, I beg to be understood as laying them down, not merely to shew that the law considers an alien under a disability; but that it is a privilege and protection instituted by the law for the subjects of this realm; that no man, who is not one of their own country, no alien, who has ever sworn allegiance to a foreign state shall have a right of passing upon their lives, persons, or properties. Therefore, my Lords, in arguing this question, as from the rights conferred upon aliens, it has not been fairly argued; because you are to consider not merely the right *conferred upon aliens*, but the rights which may be *taken away from subjects* of these realms. From the time of *Magna Charta*, it has been law, that no man should pass upon the life of a subject, but persons of his own condition: No alien could find a bill, or sit upon the petty jury. This principle of law extends through every kind of crime, whether treason, or felony; but more particularly does it apply to the case of treason; because there the subject is tried for a breach of his allegiance, and an alien is incapacitated from judging of it. That is also the reason, why an alien, who in common cases is entitled to a jury *de medietate linguæ*, in treason is not. I beg leave to call upon the Court, and the very able Counsel, who is to reply to me, to select a passage from any one of the statutes, which have been mentioned, taking away this birth-right of every subject of these realms. If the common law gives any man a privilege—a protection for his fame, his life and property, that cannot be taken away by any
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act of parliament without exprefs and positive words.—Where are the exprefs and positive words in these statutes?

It is said with triumph, that it is evident from the statutes, the legislature must have considered the privileges granted to aliens to extend to such a right as this in question, because they are excluded by exprefs words from the privy council and the parliament and offices of trust;—from whence the PRIME SERJEANT concludes, that if it were not for that saving, aliens naturalized under those statutes would fill such places. But supposing him to be founded in that argument, an alien would be capable of filling the office of Lord Lieutenant of *Ireland*, even under the statute of Charles II. Then it is said, that introducing these exceptions is a proof, that without them the statute would give the right to the alien—If that was true, Mr. *Decluzean* might claim the right, not only of filling the office of a Grand Juror, but to be Chancellor, or Lord Lieutenant, or to fill any other office of trust:—He might be PRIME SERJEANT, and in that situation, he might argue against the objection made to his own capacity. Would not that be monstrous and absurd?—The statute professes to receive the alien with hospitality—to enable him to sue for his debts, and to be impleaded. Can any man say, that under such an act, the alien could claim the right of being *Lord Lieutenant*?—Then the exceptions stated from other acts prove nothing more than this, that the legislature has been cautious and anxious that words, which could not bear an extensive meaning, should not be extended by ingenuity, or contrivance.

But see then, my Lords, what the restrictions are—The alien is excluded, not merely from the office of Lord Lieutenant, but from *every office of trust whatever*. Give me leave to ask, is the office of a Grand Juror, an office of *trust* or not?—The office of deciding whether a man shall be put upon his trial—of examining the different informations sworn against the King's subjects, to which common men have not access—to which the Prisoners cannot have access,—which the Juror is sworn to keep secret—the office of applotting money and levying it off the King's subject—Is that, my Lords, *an office of trust* intended to be committed to an alien and a stranger?—If it be, I must admit, that, saving the office of Lord Lieuten-
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nant and some few others, the whole scope of power, patronage, profit and advantages of the state is open to such strangers, as may choose to come and enjoy the hospitality and protection of this country !

But supposing, that Mr. *Decluzeau*, upon performing the requisites, would be entitled to be a Grand Juror, yet I submit, that he does not shew, by the replication, that these requisites have been complied with.

The first part of the replication is out of the case for the present—The second part is of this general nature, that Mr. *Decluzeau*, though he is not in direct terms stated to be a native, or a naturalized alien, yet he is to be considered as a native of this country; it does not state any one act done, or ceremony complied with;—it does not enable the Court to judge of the compliance; it is pleading matter of law, instead of matter of fact:—it draws a conclusion, without any foundation for it. But supposing it to be true, what answer is it to the plea?—Is it law, that a man, who ought to be considered as a native is fit for a Grand Juror?—It is a vague and indefinite conclusion, carrying no meaning; and if it were true, in point of law it does not deny the plea—He does not pretend to say, he *is a native*; he gives that up; but, says he, under certain acts of parliament, I am to be *deemed* a native; this arises from facts, but what those facts are, I will not tell you.

It is said, you are to take every thing for granted under an enabling act of parliament.—I deny the position. This is a disabling statute, robbing the subjects of this realm of that protection, which the law formerly gave them. Whenever the Crown makes a grant, it is to be construed strongly against the Crown and the person claiming under it. Therefore, if this be considered as a grant from the Crown and the parliament, the grantee would be bound in pleading to shew his compliance with the conditions, otherwise he must fail. This therefore is a bold piece of pleading—an audacious demand upon the Court, that it is impossible to be listened to for a moment. The Court are to presume what facts they please, and the pleader says, he will supply inferences of law—It is really a novelty not to be matched in the history of legal pleading.

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As to the third part of the replication, there are some requisites stated to have been performed; apply them to those appointed by the act of parliament and see whether they tally—First, by the act of parliament it is prescribed, that the party shall take the oath of allegiance, and the oath of abjuration and supremacy; then follows the declaration;—all these are averred to have been taken. But then follows another oath, which I think is not averred, and therefore the replication is defective. The question rests upon this:—Is the third oath in the statute the oath of *abjuration*, or not? For if it be not described by the oath of abjuration in the replication, it is not described at all. This last oath is not confined to mere matter of abjuration; there is much other matter in it:—there is allegiance to the King—the party swears to discover conspiracies. He may have taken the oath of *abjuration*, and not have taken all the matter contained in this oath:—he should have set forth, that he took the whole oath; and though it is said to be, *pursuant to the statutes*, yet that general expression will not help it; the averment should be more minute.

Therefore in a case where the life of a subject is depending, and where rights are taken away from the subject, and foreigners are intruding themselves in matters for which they are not qualified, I must beg leave to repeat what has been said by the other counsel, that though this man complied with every requisite, yet he is not entitled to fill the office of Grand Juror—that it never was the meaning of the legislature to give an alien a capacity to fill an office of such trust and importance.

Lord CARLETON. The question has been ably and eloquently argued, so as to convince us of the propriety of our rule, not to allow any further time.

This is a replication not put in by Mr. *Decluzeau* himself, apprised of all the circumstances and possessed of all the documents necessary to the establishment of his right. It is a replication by the counsel for the Crown upon a plea put in by the Prisoner's counsel.—I wish not to be understood as giving any opinion, supposing the question to have arisen merely upon the objection of Mr. *Decluzeau's* being an alien, how far it could be taken advantage of by way of plea. I do not wish to shake any authority upon this subject;

subject; but to have it considered, that I have not made up my mind upon the point, and that I give no opinion upon it. That a person being an alien is a good cause of challenge, I think is well founded; but whether it can be taken advantage of by way of plea, I reserve my opinion.

That a juror is outlawed may be taken advantage of by plea in avoidance of the indictment, but whether such plea is given by the common law, or depends upon the statute of the 11 *Hen. 4. c. 9.* is a question of some difficulty, that statute was passed about the same time with the case mentioned by *Hawkins*—and from a manuscript note which I have made in the margin of my *Hawkins*, I perceive the statute received the royal assent in *quindena Hilarii*, which was on the 27th or 28th of *January*, and might perhaps have preceded the decision referred to by *Hawkins*.

At the same time, there is considerable weight in what has been mentioned, that the Prisoners were not present at the time the Jury was sworn, and that may perhaps support the decision in *Hawkins* to give them a right of pleading.

But assuming for a moment, that this matter may be taken possession of by way of plea, it is necessary to consider the pleading here.—Issue is joined upon the first part of the replication—The second part is defective, as referring matter of law to the Court, without any fact to support it; therefore we throw that out of the case:—as to the third, my brethren agree with me, and we cannot better express ourselves, than by adopting the argument of Mr. PRIME SERJEANT. It appears to us, that these acts of parliament cannot have the limited construction, which has been contended for by the Prisoner's counsel—that they must be sufficiently extensive to take in cases like the present; and the nature of the restrictions proves what the operation of the clauses would have been if these restrictions had not been enacted.

With regard to “offices of trust”—they must allude to such as are previously enumerated, viz. offices held under the Crown.

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But it is said, that sufficient matter has not been stated in the replication to shew, that this Juror comes within the provisions of the statutes. We think the counsel for the Crown have stated sufficient matter for that purpose. The oaths of allegiance, supremacy and abjuration and the declaration are stated to have been taken, and the oath respecting the Pretender is part of the oath of abjuration. Therefore, we are all of opinion, that the demurrer must be over-ruled and judgment be given for the Crown—and a *respondeat ouster* awarded.

Clerk of the Crown. How say you, are you guilty or not?

Mr. John Sheares. My Lord, I must beg you will order the 7th overt-act in the second count to be read.

This was accordingly done.

Mr. John Sheares. My Lord, I am mistaken; I beg pardon for detaining the Court: I thought the 7th overt-act had been omitted in the second count.

The Prisoners then pleaded *not guilty*, in the usual form.

They were asked, were they ready for their trial; whereupon their agent desired the Crier to call the Earl of *Cork* and *Orrery* and two other persons to come forth and give evidence: None of them appeared, and then three affidavits were sworn and read.

The first affidavit was made by *John Sheares*: It stated, that Sir *Joseph Hoare*, Bart. Sir *Richard Kellett*, Sir *Patrick O'Connor*, the Revd. Mr. *Lee*, the Revd. Mr. *Stawell*, *John Theny*, and *Edward Hoare*, Esqrs. were material witnesses, without the benefit of whose testimony, deponent could not with safety abide his trial—that deponent received a copy of the indictment in the afternoon of *Wednesday* last, until which time his counsel and agent could not get admission to him;—that on the morning of *Thursday*, his agent attended him, and on that evening issued crown summonses for said witnesses, who reside in *Cork*—that on account of the disturbed situation of the country his agent informed him, he could not procure a proper person to leave *Dublin* to serve the summonses until the

the day following, when he procured *John Graham* who got a pass and set off that day in the mail coach;—that on *Thursday*, deponent wrote a letter for the Colonel of the *Somerset* militia in *England*, whose name and address deponent was then unacquainted with, and who is a material witness, requesting his attendance, and deponent delivered said letter to his agent with directions to have it forwarded, when he found the address of said Colonel, whom he discovered to be the Earl of *Cork and Orrery*;—that deponent doth not make the affidavit for the purpose of giving unnecessary delay, and hopes, expects, and believes, he will procure the attendance of said witnesses at next adjournment.

The second affidavit was made by the Prisoners agent, corroborating the former in those particulars which were within the knowledge of the agent.

And the third affidavit was made by *John Graham*, stating, that he received the summonses on *Friday* and set off that night for *Cork*, and on *Sunday* the 1st *July* served the several witnesses resident there:—some of whom he conversed with and they said they could not attend, some of them being officers in Yeomanry Corps, and Mr. *Dennis* said he was attacked with the gout in his stomach.

Mr. CURRAN. In addition to these affidavits there is a letter received from Mr. *Bulleyn*, a physician, stating that he had visited Mr. *Dennis*, who has been attacked by an irregular fit of the gout in the stomach, and is utterly incapable of travelling.

Lord CARLETON. We cannot attend to any thing, which does not appear by affidavit. In order that the counsel for the Crown may be fully apprized of what you desire, state the time to which you wish the Court to adjourn, and that you will have your witnesses.

Mr. CURRAN. My Lord, with regard to that, I have always wished to leave it to the discretion of the Court, to say, how long they think it fit to postpone a trial. Your Lordships will be pleased to see what a difficult task would be put upon counsel by naming a day—if we named a short day, that might be fatal to our client. If we named a distant day, it might be refused.

Lord CARLETON. The reason I asked the question was this, that Mr. *John Sheares* has sworn in his affidavit, that

that " he believes and expects he will have the attendance
" of the witnesses."

Mr. *John Sheares*. My Lord, it is impossible for me to answer for the illness of witnesses. I leave it to the breast of the Court. There are certain military men, who can give evidence for me, but from the disturbed state of the country, I know not where to find them.

Mr. SOLICITOR GENERAL. My Lords, no time is mentioned in this application, which is become so common, that scarce a trial occurs without its being made, and there is scarce an instance in *England* or here, in which the adjournment has not been fatal to the administration of justice. This is a very serious case; your Lordships have the indictments before you—you have the informations before you—they are great documents, and you will see, that some of the gentlemen, named in the affidavits as witnesses, cannot be able, by the most remote conjecture, to give evidence, bearing in the smallest degree upon the transaction. If those witnesses be wanted to character, the Prisoners cannot want a number of amiable men from that profession to which they have been attached for eight or nine years, to give evidence of their character, if they think it will serve them. With regard to one of the witnesses, Sir *Joseph Hoare*, he is blind and decrepid, and so advanced in years, that if any one answered for his life one week, he would run a great hazard. The transaction charged by the indictment is confined to the capital, and these witnesses have been one hundred miles from that scene. However, there is nothing I should lament more, than to appear to press forward the trial unnecessarily. The public are waiting the event of it with anxious expectation; yet I would not wish to accelerate it. We feel that the disposal of it is of great importance. If the imputation upon the Prisoners be unfounded, I shall rejoice in their acquittal; but if it be attachable upon them, justice requires, that they should suffer. See what is the diligence used. Last *Sunday* was the first day, upon which any summons was served.

Lord CARLETON. What occurs to me is, to give them time to procure such witnesses as they can:—*Monday* se'nnight would be a proper day.

Mr. SOLICITOR GENERAL. My Lords, we must offer an affidavit to the Court, if such a distant day be named. See the course of proceeding resorted to in this case. They put in a dilatory unfounded plea. This application to put off the trial is a second thought; delay therefore is evidently their object; this whole day has been consumed in the argument of an unfounded plea. They were entitled, in point of law, to make the objection. But was it not running away from the justice of the case, to select one man out of 23 of the Jury, and make an objection to him after a residence of 30 years in the country, and say, that he is not fit for the office of a Grand Juror. Taking all these circumstances together, and the state of the kingdom, why postpone the trial to such a distant day?

Mr. M'NALLY. My Lords, I must mention one thing, that plea was not the suggestion of the Prisoners, but mine, and I am responsible for it; I threw it out to the other counsel; they supported it ably, and it is not improbable, but it may be brought forward in another form in a subsequent case.

Mr. *John Sheares*. My Lords, I wish to say one word with respect to what the SOLICITOR GENERAL said concerning Sir *Joseph Hoare*. He is a near and old friend of our family;—he is nearly blind; but that cannot prevent his giving evidence; he has attended very serious and laborious duties, his parliamentary duty, which has often detained him to a late hour of the night. My Lords, I would not have sworn the affidavit if it were not within the circle of probability. I am incapable of stating, even upon mine own trial, what I did not believe to be true.

Lord CARLETON. What has been said by Mr. M'NALLY makes an observation necessary. With respect to those motions, my brethern have suggested, and I concur with them, that they are to be listened to with great caution, and that we will not confine ourselves to the affidavits, though framed in the usual form, but we will enquire into all the minute circumstances, that can tend to shew, whether the application is made with a fair view to the justice of the case.

This day has been taken up in the framing and arguing a plea, which we hear is intended to be rested upon in another

ther shape; we may therefore have the other Prisoners brought up forthwith to have them plead, that we may not lose another day in arguments of this kind, after the deliberate opinion, which the Court has already given. The Court would not be satisfied, unless I expressed this their opinion upon this subject, in which opinion I concur.

Mr. SAURIN. My Lords, we have now an affidavit sworn by Mr. Kemmis, the Crown Solicitor. It states, that he believes the application made to postpone the trial is for the purpose of delay—that deponent knows Sir *Joseph Hoare* who is very far advanced in years, and nearly blind; that the Earl of *Cork and Orrery* resides in *England*—that from the nature of the facts charged, the persons mentioned as witnesses cannot be required for any other purpose than to give evidence of the general character of the Prisoners—that deponent believes, the Prisoners have resided in *Dublin* for some years past, and are Barristers;—that the principal witness for the Crown is an officer in the *King's County Militia*, and since the commitment of the Prisoners was upon actual service and was wounded in an action, and deponent believes it is of great importance on the part of the Crown, that the trial should not be postponed. The witness for the Crown may be called into service again, and the consequence may be fatal to the administration of justice.

Lord CARLETON. There is a distinction between a Special Commission, and the ordinary commission of *Oyer and Terminer*. Under the former, the time runs against the Prisoner only from the finding of the bill of indictment. But under a general commission, it runs from the day of his committal. In this case, the Court was opened upon the 11th of *June*; it was adjourned for a fortnight;—on the 25th, the Sheriff was directed to have the Grand Jury upon next day, when the Jury was sworn and the bill of indictment found. Counsel were assigned upon that day, and the copy of the bill was not served till *Wednesday* evening. The Prisoners could not know the charge against them till then, and the charges are very long. Upon *Thursday*, the agent visits them and consults them respecting their defence; he finds there are witnesses, who are sworn to be material, and without the benefit of whose testimony, the Prisoners cannot go to trial:—What the particular objects of the testimony are, certainly do not appear.

pear; but it is stated, that from the particular circumstances of the times, no person could be procured to travel to *Cork* to serve the witnesses till *Friday*, and upon the night of that day a messenger was sent by the most expeditious mode, namely, the mail coach; the messenger could not have arrived in *Cork* till the middle of *Sunday*, and upon that day he served the witnesses, who have been called in Court. Now, let the witnesses be ever so desirous of attending, they cannot be supposed to be able to set out at a moment's warning; the time has been short, and they could scarcely have been here by this time. The only circumstance against the Prisoners was the plea put in by them, which has been over-ruled. But that does not seem to be such an instance of delay as to affect the Prisoners—Indeed, if the experiment be tried a second time, it may have more influence upon us. It is very possible, that the application may be for delay; but no unreasonable time is required. As to what is said on the part of the Crown, that the witness is in the army and likely to be called into service, the affidavit answers itself; the witness has been desperately wounded in an action, and cannot be called out while he labours under that wound.—Upon consideration, we will postpone this trial till to-morrow week; this will not be a precedent for any other cases, because we determine it with reference to the time of the bill of indictment being found.

The trial was accordingly appointed for *Thursday*, the 12th of *July*, and the Court adjourned to next day.

Thursday, July 5th, 1798.

This day the Court sat, and several Prisoners were arraigned: The indictments and the pleas of the Prisoners will be stated in the report of their respective trials.

Thursday,

Thursday, July 12th, 1798.

Note. In the interval since the last sitting of the Court, JOHN TOLER, Esq. his Majesty's *Solicitor General*, was appointed *Attorney General*, in the room of the Right Hon. ARTHUR WOLFE, who was appointed Lord Chief Justice of the Court of King's Bench, and created *Baron KILWARDEN*.

And JOHN STEWART, Esq. was appointed *Solicitor General*.

Judges present. Lord CARLETON, Mr. Justice CROOKSHANK, and Mr. Baron SMITH.

This day, *Henry Sheares* and *John Sheares* were put to the bar, and asked, whether they would join in their challenges?

Mr. *John Sheares*. My Lord, I wish to say a word as to a witness whom I expected; I mean Lord *Cork*. I wish, my Lord, to avoid the imputation of delay, as the witness is not come; particularly, as I have not heard from the witness. I did state upon a former day, that I wrote a pressing letter to him; I have a copy of it in my hand; I have received no answer. I do not mean to throw any censure upon his Lordship; it is more than probable, he did not receive it, or having received it, he may be upon the way. But I mention the matter merely to wipe away the impression from the public mind, that I made the application for delay. I do declare, I did expect his attendance in consequence of my letter. But, my Lords, the delay occasioned by the indulgence granted by the Court was only seven days, which was not sufficient to enable me to send a special messenger to *London*, with any hope of reaching his Lordship. But, I declare most solemnly, I expected his arrival, and I still declare, that if he did come his evidence would be of material consequence; I am ready to verify this by affidavit, though it is painful to my feelings to do it; because upon the last day, when I made an affidavit it was asserted, that I made it for the purpose of delay only. But, my Lords, I owe it to myself to declare, that I did expect the arrival of the witness, and his evidence would be material. But, I do not

not ground any application for further delay; for I would abide any danger, rather than labour under the imputation of seeking to delay a vindication of myself.

Lord CARLETON. We shall endeavour to take care, that any verdict given by such a jury as shall be impannelled, shall be founded upon the evidence and nothing else; not influenced by any extrinsic matter.

Mr. John Sheares. My Lord, I am sure I shall meet justice and nothing else.

Mr. CURRAN. My Lords, we have conferred with the Prisoners, and they do not choose to join in their challenges.

Lord CARLETON. *Mr. Attorney General*, which of the Prisoners do you wish to try first; or will you try them both together.

The ATTORNEY GENERAL answered, that he would try *John Sheares* first, and thereupon a *precept* was directed to the Sheriff to return his Panel, but afterwards *Mr. CURRAN* mentioned, that upon further conference with his clients, they expressed a wish to join in their challenges; then upon motion of the Prisoner's counsel the *precept* was quashed, and a new one issued for a jury to try both the Prisoners.

In obedience to this *precept*, the Sheriffs returned the Panel, which was called over. The Prisoners challenged thirteen peremptorily and fourteen for want of freeholds, eleven were set by on the part of the Crown, and one for want of freehold—the following Jury was sworn:—

Sir Thomas Lighton, Bart.	Richard Sayers,
Robert Shaw,	John Farrange,
Price Blackwood,	Cornelius Gautier,
John Stewart,	William Sparrow,
George Palmer,	Charles Bingham,
Henry Woodward,	John Ferns.

At the desire of the Prisoner *John Sheares*, *Mr. PONSOMBY* was assigned one of his counsel in the room of *Mr. CURRAN*—This was done to give the Prisoners four counsel between them.

The Prisoners were then given in charge.

Mr. WEBBER opened the indictment.

Mr.

MR. ATTORNEY GENERAL. *May it please your Lordships, and you, Gentlemen of the Jury.* With real and unaffected sincerity I assure you, that it grieves me—yes, it grieves me heavily, that the first act of my professional duty in the very responsible situation which I am now placed in, should be to prosecute two gentlemen, with whom although I have had no intercourse in life, yet they are members of that profession to which I belong—a profession, to which I am linked by every tie of affection, regard and gratitude that can bind a man of honourable feelings.

But, gentlemen, there has devolved upon me, a duty which is too cogent to be influenced by circumstances of mere indulgence to personal feeling; a duty of which the public have a right to demand, a full, a firm and an honest discharge. This prosecution, your Lordships, the Jury, and the public well know, is instituted and carried on at the desire of the government of the country, for the protection of the public peace, and to guard these rights in which the common welfare is most deeply involved:—To vindicate his Majesty's peace, his Crown and dignity, against that horrid system of conspiracy and treason, whose malignant and desperate purpose has for many years been at work in designing, and has at length burst forth with all the horrors of rebellious outrage, to overthrow the government, to subvert the monarchy, to strip this nation of its liberties and its laws, to separate us from all connexion with *Great Britain*, or the blessings of her constitution, and to establish the anarchy of *French* republicanism in their stead. To rescue and to guard us from such dangers is what the public have a right to expect, and to demand of the Crown, in right of that allegiance which every good subject pays to his Sovereign, the duties which no subject can shake off without forfeiting that protection from the father and guardian of the people, which to the humblest individual of them is the indefeasible birthright. In the name of that Sovereign, we now come to prosecute for an injured people, who seek for justice at our hands.

I should be inexcusable indeed in laying this case before you, gentlemen, to suffer myself to dilate it into any considerable length. It is a case, that does not require it. I would not be warranted in pressing upon you topics involved with metaphysical distinctions, or argumentative inference; which might weary, embarrass and distract
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your attention, and prolong the trial to that unreasonable length, which at all times is injurious to the administration of justice—when, in my humble judgment, I have a case to lay before you, as plain, as obvious and direct to criminate the gentlemen at the bar, as ever was inserted in any indictment, or brought before a Court or Jury.—It will be but just barely necessary before I proceed to state facts, to lay down a few legal preliminaries with such concise precision, as may render the conclusions of law which are to be drawn from those facts, most obvious to the Court and intelligible to the Jury.

The indictment upon which the Prisoners are charged, is founded upon the antient and well known st. 25 *Ed. 3.* originally enacted, to guard the subjects against loose and indefinite charges of treason with which they had been theretofore harassed, and which valuable statute is still remaining unaltered and unadded to, from that period to the present. The counts in the indictment are two:—The overt-acts necessary to be stated and previously made out are many. The first count is for compassing and imagining the death of the King; and the second is for adhering to the King's enemies. Your Lordships know, and the Jury can be no strangers at this day, (for unhappily we are of late much familiarized to trials of this sort in both countries,) that it is necessary in order to support indictments under that statute, to lay certain overt-acts in each count to which proof is to be applied; therefore, gentlemen, I shall state, without embarrassing you with matter of difficulty, that there are a few considerations to which I wish to call your attention. First, as to that count of compassing and imagining the death of the King—According to the law which I have stated and adjudged cases, in the construction thereof, the crime of compassing and imagining becomes complete, so soon as the wicked imagination is acted upon by acts of open deed manifesting obviously the intention of the actor. From that moment, the intention so manifested is the completion of the crime. And in considering the ground upon which you shall regulate yourselves in the application of the evidence adduced, you will be kind enough to keep in your mind, first the fact, which is to be demonstrative of the intention, and then consider the relation of that when proved to the design charged against the Prisoner.

The next principle which I would wish to lay down, is, that the evidence of the facts ought to be of that nature
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as should be illustrative of the intent, so as to satisfy the consciences of good and sensible men. Gentlemen, under the construction of the statute, it has long been settled law, that in the care of providing for the safety of the King, that care is not confined to such acts, like assassination, as would amount to direct attempts on his life, but that it is extended to every thing deliberately done, which may in its probable and natural consequences, bring his life into danger; and therefore having heard the indictment read, containing the overt acts therein mentioned, and without delaying you by a repetition, I have barely to mention that the entering into any of those measures that are laid as overt acts in the indictment, to dethrone or depose the King, or overthrow or force him to change his government, such as by conspiracy, and procuring arms, and armed men, for the purposes aforesaid, the forming plans to seize the Camp, the Artillery, and Capital—the levying war and rebellion, for the purposes I have mentioned, are amongst many others, such as inviting the enemy to invade the kingdom, under unquestionable authorities of law, decided overt acts of compassing the death of the King.

The Prisoners are charged with meeting, consulting, and conspiring to procure arms for the purpose of deposing the King, and to overthrow his government, to put an end to the Monarchy, and to lay open a scene of havoc and devastation, such as have already, in consequence of such daring conspiracy, drenched the country in blood; and as you must know, that acts of that kind are beyond all doubt demonstrative of such intention as I have stated, so we shall establish them against the Prisoners by irrefragable proof.

Gentlemen, there are certain acts of notoriety to which it is unnecessary to draw your attention or to apply evidence. It is notorious that we are at open war with the persons exercising the powers of government in *France*.—It is matter of notoriety, that since the commencement of that war, there have been at work dark and wicked conspiracies, formed upon the model of *French* principles, and principally that detestable conspiracy associated under the denomination of *United Irishmen*, to overthrow the best government which can be enjoyed by the subjects of this or any other country, who, under the affectation which has at all times been assumed by men of that description, (that the intent was to remedy imaginary grievances,) resolved,

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under the guise of false philosophy, to overwhelm us with real treason. It will appear to you, however, that amongst those presumptuous spirits with whom the Prisoners were embarked, there were men, who out of this destructive chaos of confusion, were vain to hope that they were to rise upon the ruins of a desolated world, who exulted in the speculations of their bloody triumphs, of anarchy, in the desperate hope "to ride on the whirlwind and direct the storm" that they had prepared to burst upon your heads.

Gentlemen, there are advantages to the Prisoners attending this species of trial, which are unknown in other capital cases. By the statute law of the land, it is necessary to serve copies of the indictment, accurate and precise, a certain number of days before the trial, that time has been more than doubled in the progress of the period which has elapsed since the copies were served; the Prisoners, by this means, and from the nature and frame of the indictment, had full notice to what facts they were to apply their defence; they are assisted by counsel of great eminence, they are themselves men of considerable talents and learning in the law; I wish they had not misapplied those talents to wicked and mischievous purposes; for there was an easy, and obvious, and an honourable road, by which they might have arrived to that high estimation and rank, to which other men of their cotemporaries and acquaintance have arrived, in the same profession to which the Prisoners belong. But, gentlemen, this consideration takes off much from that anxiety which would otherwise press upon our feelings:--the Prisoners are not, as we have too frequently seen upon the Circuits, which the Prisoners have attended as Barristers, men of low situation, unlettered, unacquainted with the excellence of the law under which they live, nor are they such men whose ignorance, at the same time that it exposes them to be the wretched instruments of seduction, render them rather objects of pity than punishment. No, gentlemen, you will find in the course of the trial, that the Prisoners were no strangers to literary pursuits, or to an exercise of talents; and I own it does astonish me, that men having an opportunity of knowing and loving the constitution (for to *know it* and *not to love it*, as a lawyer ought, is amazing) could have so perverted their minds, and abused the honourable opportunities which were afforded them, as to have meditated the destruction of that goodly fabric, under whose roof they were nurtured.

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The Prisoners well knew that by our law that the man who councils a *single murder* is to pay the forfeit of his life, how much more are they to suffer, who knowing that, were deliberately the authors of causing and procuring the *murder of thousands and tens of thousands* of their innocent and deluded countrymen?

I know, gentlemen, the painful duty which has devolved upon us all; it is painful to the Court to preside at such a business; it is painful to the Jury to investigate and decide upon it, and I have reason to feel that it is no small portion of pain to be the public accuser upon such an occasion. There is not a man who knows me in private life, that does not know it weighs heavily upon me. But mistaken lenity to atrocious delinquents, is at all times *crudelis misericordia*, with respect to the public:—I know that the brightest attribute of our Sovereign is to administer justice in mercy; but a wanton indiscretion of mercy is a wicked and ineffectual compromise with criminals, it is triumph to the guilty, it is depression to the innocent, and would perpetuate that devastation which rages through the land.

Gentlemen, the indictment states, among other things, that a wicked conspiracy was formed by a banditti of men, associated under the denomination of *United Irishmen*. I shall not waste your time by going into a history of that body of men. The evidence will speak most emphatically in this trial, and you will have the history of it from some of its most active members, and from the acts of the Prisoners themselves:—there was no species of experiment, that was not made with the wretched and low people of this country; they were not competent suddenly to corrupt them; long working upon them was necessary, to make them forgetful of or indifferent to the comfort and protection they enjoy. When we first heard of the *French Revolution*, we heard of it, as thunder at a distance; but the *United Irishmen* and their associates soon imported *French* principles and improved upon them; the pen and tongue of every revolutionary ruffian were put in requisition, those principles and doctrines which approached us like plague, pestilence, and famine, and were the dreadful presagers and forerunners of *battle, murder, and sudden death*. Terror and seduction stalked forth hand in hand, and the libellous defamation of the evening was the prelude which bespoke the assassination of the night; and this once happy country, where men had lived, until a few

few years ago, happy, contented, industrious, and protected, had all its hopes blasted, and the wretched credulous peasants were so hurried or deluded to their destruction, as if Satan and his associates determined

If not to drive
Seduce them to their party, that their God
May prove their foe, and with repenting hand
Abolish his own works.

That mischiefs, such as I have stated, must have been the result, had the measures of the Prisoners and their associates been successful, you will have little doubt, when the evidence shall be laid before you; I shall state it shortly.

Gentlemen, two kinds of evidence will be laid before you, parol and written; the latter will be of very considerable weight, and being of the handwriting of one of the Prisoners, and found in the chamber and possession of the other, it will go to a participation with them both. It will appear, that the Prisoners at the bar, who as I have stated are lettered men, held intercourse at a shop of a certain bookseller in this town, (of the name of *Byrne*,) and at present in confinement. He was found to be an apt medium, and his house a convenient rendezvous, to chaunt over that treason and mischief, in which the Prisoners were involved. It will appear, that a man of no less note, than an officer in his Majesty's militia (he is named in the indictment Captain *Armstrong*) resorted often to the shop of Mr. *Byrne*, the bookseller, at whose shop, as well as at many others, a variety of modern publications are sold, which have too much captivated the dispositions of men, who might have employed their time and talents better. The intercourse, however, between Captain *Armstrong* and Mr. *Byrne* became very familiar, and from the course of the reading, and the loose and unguarded conversation of the former, the latter was led to believe and conclude that Captain *Armstrong* was one of those, who from his political principles, was very deeply embarked in the conspiracy of the day. Whether from a vanity of his knowledge, or appearing to be versed in the false philosophy of the times, Captain *Armstrong* did pass with Mr. *Byrne* for a very learned and useful disciple of the *United Irishmen*: After an acquaintance of some length, Mr. *Byrne* did request to be allowed to introduce him (Captain *Armstrong*)

Armstrong) to some gentlemen, who he said were of the same political sentiments, and were desirous to cultivate his friendship. Mr. *Byrne*, represented them to be "Gentlemen of the bar, and men of talents, engaged in their country's cause, and they are satisfied" said he, "that you can contribute to their assistance." Captain *Armstrong* was not of so shallow an understanding as not to have formed an immediate conception as to what this conversation led, from the significant manner of Mr. *Byrne*; and from the characters of the Prisoners, of which he had often heard; he naturally conjectured something of Mr. *Byrne*'s purpose. Captain *Armstrong*, without much difficulty, acceded to the proposition; but on reflection, that his own indiscretions might have led to the proposition, and apprehensive that an indulgence of a curiosity, to be acquainted with Mr. *Sheares* and his pursuits, might involve him, he resorted to the commanding officer of his own regiment, and another, with whom he lived in honourable confidence, for advice on the occasion.

"I am under your advice," said he, to his officers, "but why should they pitch upon me, unless that from my being an officer, they supposed I might be an useful instrument?—but I submit, said he, the matter to your judgment." Conversations had gone abroad, injurious to the character of this regiment, and it did occur to those officers that Captain *Armstrong* should, by all means, avail himself of the opportunity to make discovery, as they thought they might acquire a knowledge of the cause of the imputation which the regiment laboured under, of supposed disaffection. "If we learn it," said they, "this purpose will be answered, to rescue the character and the honour of the regiment, go on, admit of the interview, and as to that which seems to lie upon your mind, the reluctance of revealing what may at first view be considered as confidential, instead of its being an act unworthy of a gentleman, and a man of honor, it is conformable with the principles of both, to put yourself in the way of procuring information which may render essential service to the state, and stop that carnage which is threatening the subjects of the land; a false delicacy of that kind can never justify you, when put in competition with this imperious duty."—These arguments prevailed.

Gentlemen, Captain *Armstrong* by appointment went to the shop of Mr. *Byrne* upon the 10th of *May* last, and after
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having been there some time Mr. *Henry Sheares*, who appeared to come by appointment, did arrive:—it is evident that *Byrne* had given the Mr. *Sheares* the fullest assurance that the Captain was every thing they could wish, an introduction took place, both parties seemed prepared for it, and with that degree of significant insinuation, of which no man less versed in the matter could have a doubt, *Byrne* addressed Mr. *Sheares*, and said, “you may rely upon him, he is a *true brother*; go together, there is my back room, you may have conference there.” Mr. *Henry Sheares*, and and Captain *Armstrong* sat some time together *tete-à-tete*; common place conversation ensued at first; but Mr. *Henry Sheares* early intimated that there was a subject of great magnitude upon which they were likely to speak, but he had rather not broach it, till his brother *John* should come that was not long a matter of expectation, *John Sheares* soon arrived, he was introduced; all difficulties were soon removed; and after some cursory conversation ensued, Mr. *John Sheares* opened himself by saying, “I know you perfectly well, Capt. *Armstrong* in point of character; I know your principles, and I have no difficulty of communicating freely, and accordingly very few words passed, before the following conversation took place, which I shall now mention to you:—“You are,” said *John Sheares*, “an officer in the *King’s County Militia*, you know the great cause in which we are embarked, I have heard of your excellent disposition, and am aware of the importance of your assistance; you can be of considerable use, many men of your regiment, as I am sure you know, shew excellent dispositions also, and some are in our confidence; but it is necessary to have your assistance, by which, as an officer, much may be effected: you will be able to give them passes and to procure leave of absence from the Camp, and by your assistance we can do much, but our friends in the regiment are not as yet confident of your co-operation; I can give you an opportunity of intercourse with Serjeant *Connors*, who is an extremely active, useful and enterprising man. We have had several meetings with him, and he has pledged himself honourably to our purpose: It is however necessary to be expeditious, for the period of time is approaching when *we must ACT: a general rising MUST* take place; the country is growing impatient, and our best friends have most sorely felt the weight of criminal prosecutions

“prosecutions. We are obliged to accelerate our purpose; we cannot wait for distant expectations; *we must* MAKE A HOME EXERTION! We are determined not to wait for the *French* now, but make a primary effort of our own.”

This general conversation was pretty explicit, and such, if there were no more of it, as might enable you to draw a conclusion of its purpose; it certainly was tolerably plain for the first time; however, Mr. *John Sheares* begged to observe, that there was one thing he Mr. *Armstrong* was to have in recollection; “Our friends were aware, that you can work much better with the Roman Catholics of your regiment, as they have been sufficiently worked upon by your friends to irritate their feelings, and to make them easily convinced that they should hold themselves aggrieved.” And here, gentlemen, it is impossible not to observe the diabolical purpose of laying hold of every unhappy and unfounded prejudice which had prevailed in this as in other countries, in the minds of the credulous and uninformed populace; although it had been the pride and glory of his Majesty’s auspicious reign, to have eased the Roman Catholic body of every semblance of oppression, to have received them into the bosom of the country, and the freest participation of the constitution; yet, some wicked and infernal spirit has been for ever at work to keep alive the dæmon of discord, long after the causes of real discontent had vanished—But it is not to be wondered at. The speeches and publications of disappointed ambitious men had been daily exhibited through the medium of a licentious press; and in addition to the modern philosophy of the infidel, the antiquated and exploded religious distinctions were to be blended up, as the common combustibles which knaves and impostors have always used to set an infatuated nation in a flame.

Gentlemen, when I make use of strong expressions, I would not wish to have them understood further than they are applicable to characters which have heretofore existed, for though my arguments may bear upon the Prisoners on trial, it would be illiberal to overbear men in their situation with the language of insult.

Gentlemen, I have stated to you the business of the 10th of *May*. It was agreed, that they should have another meeting, so early as the 13th, for that the time was pressing; in that interval it was intimated, that Serjeant

Connors

Connors and others might apply for passes; that Captain *Armstrong* would have no difficulty in giving them, and that he should have a note to *Connors*, by way of introduction to the business; that they might converse freely together. A communication after took place between *Connors* and *Armstrong*, in which *Armstrong* was not willing to let himself out altogether too suddenly; after handing the note, and finding him a little shy, the Captain gave him to understand, that they *might* be better acquainted, *Connors* seemed to comprehend him, but no further conversation took place, except that it was understood, that he might have any pass to town that he required, which he accordingly accepted of.

Gentlemen, according to appointment, on the morning of the 13th, there was another interview between Captain *Armstrong* and the Prisoners, at their house in *Baggot-street*. *Henry* first appeared, and after being in company with him some short time, *John Sheares* came in; upon his arrival, very little ceremony was necessary to reassume the subject of the former meeting, Mr. *John Sheares* said, "the time pressed upon them; on communication I find, "a rising must take place immediately. I have some things "of importance to mention, and among others," said he, "I have a plan well digested and considered by my friends, "for taking by surprize the CAMP at *Lehaunstown*, the city "of DUBLIN, and the ARTILLERY of *Chapelizod*, on one "and the same night, allowing only such intervals of "time as will encrease the confusion and make it impossible for government to protect themselves, or resist us, "for we have NUMBERS sufficient and ready to act." He asked Captain *Armstrong* about the state of the regiment, and whether it would be practicable to bring them into operation, he again pressed Captain *Armstrong* to keep up the spirit of revolt among them, and said, the great enterprize would be forthwith commenced, that the torrent would carry all before it, and that it was determined not to spare any human being who would dare to oppose them. He said, he would wish to advise with Captain *Armstrong*, what was the best method of taking the camp, whether by storm, by surprize, or by obtaining of the counter sign. No conclusion was formed for that time, although much important communication took place; but it will appear that they conversed upon it long. *J. Sheares* told Capt. *Armstrong*, that as a great mode of carrying their purpose, he should make

make as many *United Irishmen* as he could, particularly in his own regiment, and particularly of that description of people whom he mentioned before, and "you will by these means be of the greatest service to our glorious cause, you will be entitled to be called the SAVIOUR of your country."—Saviour of your country! What a profanation of expression! that appellation by which we have been accustomed with pious devotion to address and to implore the REDEEMER of the world; who came not to destroy man but to save him, and offered up his own blood for the salvation of mankind. This is the appellation that was to be thus blasphemously applied to *him* who was to be engaged for the dreadful purpose—not to save, but to destroy.

Gentlemen they parted for that time; but another meeting was held at the same place upon the evening of that day; the subject was resumed at the house of Mr. *Sheares*, to which we shall have occasion to resort for more purposes. It was intimated by the Prisoners, "that the time was becoming more pressing every moment, that their friends were growing so impatient, it was impossible to keep them from acting. The trials were expected in *Kildare*, at the adjournment of the Assizes in a few days, and that to avoid them, their friends there, and particularly a Mr. *Reynolds*, declared that it would be impossible to keep them from acting," "act," said they, "we must." During this conversation four men came in, Mr. *John Sheares* appeared much taken up, and said he had a great deal of business to attend to, and that the four men were preparing matters for him; a note was handed to him, and upon that occasion, he again mentioned the necessity of expedition. "However," said he, "to further our cause, you must allow me to make you acquainted with a particular friend, who is most active, with whom you may communicate as freely as to me, and you may unboresome yourself to him." Accordingly an introduction took place between Captain *Armstrong* and Mr. *Lawless*, the close friend of the Prisoners, one of whom was arrested since at his house.

It seems that gentleman (Mr. *Lawless*) is not forthcoming, but has fled; he was bred a surgeon, and as his case is not immediately before the Court at present, it would be improper for me to state more with respect to him than is connected with the present trial. The introduction took place, and Mr. *John Sheares* urged as a rea-

son for handing Captain *Armstrong* over to any other person, that he (*John Sheares*) had special business to transact at *Cork*; that he must go there with expedition, that he must ORGANIZE *Cork*, and that the general rising which was planned all through the kingdom, was to take place there so as to co-operate with that in *Dublin*. He said he had undertaken for that department, and that he must go there and fix the time of its completion; it was calculated to be at a few hours interval, that the confusion might answer their general purpose, and the more embarrass the Government which was to defend the country.

In consequence of Mr. *Lawless's* introduction, a pretty free conversation took place, particularly on the subject of the Camp at *Lehaunstown*; they talked of its situation, and whether it should be taken by storm, or by treachery. *Lawless* observed much on its situation, and said, "that there was one circumstance very fortunate relative to it, that there was a number of trees at the end of the Camp, which would be of the utmost convenience to hang their opponents, at the moment of their rising; he said, that that was so necessary an ingredient, that he told Captain *Armstrong* he must keep his attention to it."

A subsequent meeting took place between *John Sheares* and Captain *Armstrong*, when a note was handed by Mr. *John Sheares*, who intimated that he had taken memorandums of the names of several persons with whom he had communication, by means of his servant who had been very active in making *United Irishmen*, and he took out a letter, upon the back of which were written the names of several serjeants in the regiment, and among them the name of *Connors*. It happens that that letter, with that very indorsement in the hand-writing of Mr. *John Sheares*, has been found on his person. And another letter, written by Mr. *John Sheares*, directed to Captain *Armstrong*, has been found amongst the papers of *Cormick*, who has been proclaimed and fled, by which letter which remained with *Cormick* unsealed and undelivered, the privy of the Prisoners with *Armstrong*, and the intended communication through him with *Connors*, demonstrably appear—you'll find that no less than seven meetings took place on the same business between the parties, from the 10th of *May* to the 21st, when the *Sheares's* were arrested; and in the last of those, *John Sheares*, after alluding to the justice of the *Executive Directory* of the *United Irishmen*, informed the Captain, that instead of being a Captain, he had it in commands

mands from them to tell him, it was their resolution to give him the command of the regiment as a reward, and for his service. So confident were they of establishing their purpose, so completely had they reduced their schemes into system, that they had actually determined to reward such men as Captain *Armstrong* with the command of the regiments they betrayed. "You shall have the command," said they, Why? "Because you have been the gallant and deserving instrument of turning the bayonets of the soldiers of the King against his faithful subjects, to deluge the country with blood, to annihilate the monarchy, overthrow the government, and to spread ruin and devastation around;" therefore you shall be rewarded, and those are the services we mean to requite.

It will appear, that at the very moment when this revolutionary system and rebellion was hatching, and likely to be brought to action in a few days, that the Prisoners were active every where, as men of their talents might be supposed to be; for you will see, that their talents were calculated for the most formidable mischiefs. Meetings took place night after night amongst their Superior Councils, and none were admitted but men of high confidence, and acquainted with the interior arrangement; for the unfortunate and misguided people, who are made the wretched instruments of ruin, were never acquainted with their orders until they came to act for their own destruction.

A meeting (among others) took place in *Werburgh-street*, in the middle of *May* last, and a person will be brought forward to shew, that he was summoned, as having accepted a command as Colonel in the army of *United Irishmen*. That in consequence of that summons to men in command and authority, Mr. *John Shearès* did come there. It will appear that the meeting was expressly summoned for MILITARY purpose, and was attended by men, who had embarked so deeply as to be ready with their *organized forces*. The object of a direct and instant rising was there disclosed, and a number of persons were there present, who have been since distinguished in the rebel army; one of them in particular, a Mr. *Michael Reynolds*, who commanded the Rebels in the late battle at *Naas*, was present, and he did express there from authority, that certain parts of the country were growing so impatient, that they were determined to act; he said, that otherwise he could not keep his men together, and that the gaol of *Naas* was so

full of persons expecting to be brought to trial at the Assizes—" Unless you act," said he, you must give up, " for these people will not wait longer." A man of the name of *McClune* was at the same meeting, spoke also to the same effect. Mr. *John Sheares* took an active part at that meeting, and the circumstances of the meeting will be minutely detailed to you.

I come now, Gentlemen, to a piece of written evidence, to which I am to call your particular attention, and you will see by this document to which I have alluded as being in the hand-writing of one of the Prisoners, and found on the other—that if the Government of the country had not with peculiar vigilance obtained information of what was going on, but had remained inactive, and not laid hold on the conspirators, the country might have been lost in an instant; but however fortunate in discovery, if they had not acted vigorously, they would have betrayed the rights of the subject, of the Crown, and connived at the destruction of both.

It is high time that the world should know whether they or their calumniators ought to be the objects of censure from a set of men, whose pusillanimity or disaffection have made them the defamers of honour, and the advocates for outrage and rebellion. Acting according to the honest impulse of duty, the Government arrested the Prisoners and many others; whether the events which have since happened have justified their exertions, and whether the progress of these trials will justify the activity and vigilance with which they have acted, let the world at large judge. I thank God, that I live to address this venerable Bench, and that upright Jury:—Whether it was likely I should have done so under all the circumstances, if such calumniators governed, you will have little room for conjecture.

But it must be a consolation not only to the Bench, to the Jury, and those around me, but it must be a consolation even to the Prisoners themselves, that the constitution which they endeavoured to destroy, and the benignity of those laws which they meant to subvert, are still in existence, to afford them a more patient and impartial hearing, and to furnish them with more advantages for their defence than are to be found in any other country on the earth.

In other countries, to whose principles, the unhappy Prisoners were devoted, the accuser is often the Judge,
and

and to criminate and convict are one and the same. But, gentlemen of the Jury, you will investigate with coolness, you will deliberate with wisdom, and decide with justice—That justice the Prisoners and the public have an equal right to demand from you, and in discharging that duty, you will be equally regardless of the frowns of power or the clamours of the mob.

Upon the issuing of the warrant against Mr. *Sheares*, an officer of high authority, Mr. *Alexander*, resorted to their house, one of them was taken there, another was taken at the house of Mr. *Lawless*, which brings him into close connection. Mr. *Alexander* did not proceed with ruffianly violence, or the display of instruments of death, but with that decorum becoming a Magistrate, he walked into Mr. *Sheares*'s chamber, told him he was arrested, and that he must come with him. He searched for papers, as Magistrates upon such occasions are always directed to do, he observed a desk, and asked to whom it belonged; Mr. *Henry Sheares* acknowledged it to be his: in that desk was found a paper, which I have reserved for the second part of my statement, namely the written evidence.

I will read to you the paper alluded to; it is of the handwriting of *John Sheares*, I can not add to or diminish it, it can not change its own form and body, but it will speak conviction. As to its admissibility and application under all the circumstances—and neither can be questioned by any man who is acquainted with the adjudged cases on the subject.

The composing and keeping the paper in question, for treasonable purposes, is laid as an overt act in the indictment; as the paper is upon that very business, relative to the charge, and embodied in the indictment against both, the composing, procuring and keeping such paper, for the purposes laid in the indictment, are proper subjects for your discussion. Observe, gentlemen, the period when the arrest was made, it was upon the 21st of *May*—the last meeting of the Prisoners and the principal witness was upon the 20th.—That paper, which will be proved to have been found in the desk of *Henry Sheares*, conveys upon the face of it much appearance of being a deliberative act, was prepared with great caution, and the very rasures and amendments which appear on the face of it, are proofs of determined and considered intent. You cannot doubt, after this paper shall be read, that a direct and immediate massacre and revolution were intended; and it is expressly con-

versant

versant of all the means by which it was to be at first effected, and afterwards completed. It imports to be an address to the people of *Ireland*, stating, that an insurrection had already taken place, and it endeavours to draw the people together by promises of reward, by the threats of terror, and arts of seduction. I do acknowledge I have read papers not extremely dissimilar, as published in and applicable to the situation of another country after the revolution of *France*, preparatory to the death of an amiable and unfortunate monarch, the weakness of whose concessions hurried on his own fate and his kingdom's ruin. The plan in *Ireland* was similar to that of *France*, and borrowed from that, and therefore necessarily correspondent in the principal parts:—It begins, "*Irishmen*, your country is free, " and you are about to be avenged, that vile Government " which has so long and so cruelly oppressed you is no " more.

(*Here the ATTORNEY GENERAL read the Proclamation, for which, Vid. post.*)

Who is there that can read this bloody scroll and not pronounce judgment upon the intention and imagination of the heart which composed it! and whilst I thus behold it, me thinks I have in full and palpable form before me, the sanguinary author penning it with his bloody dagger in one hand, and pointing in triumph to the revolutionary tribunal and guillotine with the other. And yet, gentlemen, it is not unworthy the observation of my countrymen, that there may be found in this paper some precepts, that, if well applied, it would be well to inculcate, when it denounces vengeance against treachery and cowardice.—I admire the wisdom of the laws of those countries, which put *traitors and cowards* in the same class of public criminals; and I am free to say, that the man that is traitor or coward enough not to take that unequivocal part which becomes him at such a time as this, deserves the severest punishment and the execration of his country.

But, gentlemen, in this paper you will read the cruel sentence that anticipated revolution had pronounced, upon the innocent and honest vindicators of their country, and when you read it you will say, that there is not a single line which is

—————But to teach
Bloody instructions, which, being taught, return
To plague the inventor.—————

We

We shall now call our witnesses, and I consign this case and the Prisoner to God and his country.

JOHN-WARNEFORD ARMSTRONG, Esq. *produced.*

Mr. CURRAN. My Lord, before this gentleman is sworn, I will take the liberty under the protection of your Lordship, to ask a question, which at first sight may seem a sort of professional shift to disturb the witness. I protest I do not make it with that view. The propriety of it will appear hereafter. Under the sanction of the Court, I beg to ask, or that any other person directed by the Court, may ask, whether this gentleman does believe in a God?

Lord CARLETON. Do you desire him to be sworn upon the *Voire Dire*?

Mr. CURRAN. I do not apprehend that to be necessary; because putting an oath to a witness admits in some degree, that he acknowledges the moral obligation of an oath.

Lord CARLETON. Ask him now.

Mr. CURRAN. In the presence of this awful Court, I ask you, to declare whether you believe in God, and in a future state of rewards and punishments.

Witness. I do.

Lord CARLETON. Swear the gentleman?

Mr. CURRAN. Have you always believed so?

This question was objected to, as being proper only upon a cross-examination to affect his credit.

The Witness sworn and examined.

Q. Pray, Sir, in what profession are you?

A. I am a Captain in the *King's County* Militia.

Q. Are you acquainted with Mr. Henry or Mr. John Sheares?

A. I am; with both of them.

Q. Do you see these gentlemen in Court?

A. I do.

Q. Point them out?

A. That is Mr. Henry Sheares and that is John Sheares, I believe.

Q. You

Q. You know these two persons ?

A. I do.

Q. Can you tell when you first became acquainted with either of them ?

A. The first time was *Thursday*, the 10th of *May* last.

(*Here the witness produced some papers.*)

Q. What papers are these ?

A. Some notes I took of the business as it happened.

Q. In your own hand-writing ?

A. Yes.

Q. Then you have a right to look at them. Can you recollect, how you happened to become acquainted with them ?

A. I came to town from the camp about business, and went into Mr. *Byrne's* shop— After some conversation, he asked me, “ Did I know Mr. *Sheares* ? ” I asked him, “ Was it *Sheares*, the lawyer ? ”

Q. What camp did you speak of ?

A. The camp at *Lebaunstown*.

Q. Was your regiment quartered there ?

A. My company was quartered there ?

Q. Where was *Byrne's* shop ?

A. In *Grafton-street*, I do not know the number.

Q. What did *Byrne* propose ?

A. He asked me, “ Had I any objection to meet Mr. *Sheares* ? ” I said, I had not.

Q. How long had you been acquainted with Mr. *Byrne*, the bookfeller ?

A. I believe, I have known him about two years.

Q. What was the nature of that acquaintance you had with Mr. *Byrne* ? was it familiar, or otherwise ?

A. I knew him as my bookfeller, whose shop I much frequented ; I was there almost every day.

Q. Do you recollect any particular description of books which you were in the habit of purchasing from him ?

A. I used to purchase every political pamphlet as it came out, and other books I fancied.

Q. Do you recollect what was the particular occasion of his asking to introduce you to Mr. *Sheares* ?

A. I did not know his purpose.

Q. But

Q. But you were speaking about something?

A. I was not speaking at the time; he followed me out.

Q. You had been speaking?

A. I had, but do not recollect.

Q. There were other people there?

A. There were.

Q. He followed you out, when he made that proposal?

A. He did.

Q. Did you take any particular measure in consequence of that proposal.

A. I did; I went to look for Captain *Clibborn*, a man upon whom I had dependance, and who I knew was in town: He was my particular friend.

Q. Was that before you met either of the Mr. *Sheares's*?

A. It was.

Q. (*By the Court.* Was that immediately after you left *Byrne's*?)

A. It was, my Lord.)

Q. Did you see Mr. *Clibborn*, whom you went in quest of?

A. I did.

Q. What did you do?

A. I told him what had happened, and asked him for his advice.

Q. I presume you mean, what had happened between you and *Byrne*?

A. I do, Sir.

Q. Can you recollect what advice he gave you, or what you determined to do?

The counsel for the Prisoners objected to this question.

Q. Did you come to any determination?

A. Capt. *Clibborn* advised me to give them a meeting.

Q. The result of your conversation was to give Mr. *Sheares* a meeting?

A. It was.

Q. Mention, whether you were ever introduced to the Mr. *Sheares's*, or either of them, in consequence of this proposal, or not?

A. Upon my return to Mr. *Byrne's* late, I waited until the elder *Sheares* arrived.

(*Q.* By the Court. That is *Henry* ?

A. I believe so, my Lord.)

Q. What passed upon the arrival of Mr. *Henry Sheares* ?

A. Mr. *Byrne* introduced me to him in the inner shop.

Q. Do you recollect in what manner, or form he introduced you ?

A. He only mentioned my name, but said, that if we had a mind to chat, we might go into the room inside the inner shop.

Q. Recollect whether any thing else was said by *Byrne* in the presence of Mr. *Henry Sheares* ?

A. He opened the door, shewed me in and said, " All I can say to you Mr. *Sheares*, is, that Capt. *Armstrong* " is a true brother, and you may depend upon him."

Q. Be so good as to call to your recollection any thing that may have passed upon that interview between you and Mr. *Henry Sheares* ; you have a right to refresh your memory by your notes—At what time did you take them ?

A. I took a sheet after every interview I had with the gentlemen.

Q. Mention the import and substance of what passed ?

A. *Henry Sheares* told me, that what he wanted to say to me, he wished to say in the presence of his brother.

(*Q.* By the Court. Did he say this in the presence of *Byrne* ?

A. No, my Lord, in the private room, when we were alone.)

Q. Do you recollect any thing worthy observing to have passed that day ?

A. I told him, I had no objection to wait till the brother came.

Q. When did you again hold conversation with him ?

A. In a very short time after, the other Mr. *Sheares* came to the shop.

Q. After he came, where were you ?

A. We were introduced pretty much in the same manner as before.

Q. Do you mean by *Byrne* ?

A. Yes.

Q. He

Q. He introduced you to *John* also? Mention then what passed?

A. He told me, he knew my principles very well—

(Q. By the Court. Who told you that?

A. Mr. *John Sheares*.)

Q. Were you at this time in the inner room again?

A. Yes.

Q. And the door shut?

A. I believe so.

(Q. By the Court. Did the brother *Henry* go in?

A. No, my Lord, I had separate interviews with them.)

Q. Did Mr *Henry Sheares* go away?

A. He did, before *John* came, and did not return that day.—*John* said, he knew my principles very well—that he was emboldened by that knowledge and the pressure of events induced him, for the good of the cause, to make himself known to me, and to shew me how the cause could be benefited by my joining the cause *in action*, as he knew I had *by inclination*.—I told him, I was ready to do every thing in my power for it.

Q. Meaning the cause?

A. Yes.—And that if he would shew me, how I could do any thing, I would serve him to the utmost of my power.

Q. Did he state to you in what manner you could serve this cause to which he thus alluded?

A. He said, that as I was willing to serve it, he would tell me at once what I could do—He told me, that the rising was very near—that they could not wait for the *French*, but had determined upon a home exertion, and that the principal manner in which I could assist them, was by seducing the soldiers, and bringing about the *King's County Militia*, and consulting with him about taking the camp.

(Q. By the Court. What camp?

A. The camp at *Lehaunstown* i understood, where I was quartered.)—And that for the purpose of bringing about the soldiers, he would recommend me to endeavour to practise upon the non-commissioned officers and privates, who were of the *Roman Catholic* religion, as they were

were most likely to think themselves aggrieved. I do not recollect any thing more of the conversation that day, except our appointment to meet the *Sunday* following.

Q. Did he mention an appointment for that day?

A. He did.

Q. Where?

A. At his house.

Q. Where was that?

A. In *Bagot-street*.

Q. Did he tell you?

A. Yes; for I did not know it till then—On the *Sunday* following I went to his house, and the elder only was at home.

Q. That was *Henry*?

A. I believe so; I only knew them at that time by the distinction of elder and younger.

Q. Do you recollect the number of the house?

A. I do not.

Q. Upon which side of the way is it?

A. On the right hand going out of town, his name was upon the door?

Q. What passed?

A. I had a repetition of a good part of the conversation with *Henry*, that I had had upon the former day with *John*.

Q. Mention what you particularly recollect?

A. He told me, that he understood his brother and I had conversed together—he apologized to me for not returning to me to *Byrne's*, for that there was a committee sitting that day, which it was necessary that one of them should attend.

Q. Did he mention what that committee was about?

A. He did not.—He asked me as to the state of the regiment, and the situation of the camp; where it was most vulnerable, and the number of troops stationed there—he questioned me as to the possibility of taking it by storm, or by treachery, or by using the countersign, or something of that kind—I do not recollect any thing further till the Prisoner came in.

(Q. *By the Court.* This conversation was before *John* came in?

A. It was.

Q. Do

Q. Do you mean to say, you do not recollect any thing more said by *Henry*?

A. Except a repetition of what *John* had said.)—*John* asked me, whether I knew any *United* men in the regiment—I said, not.

Q. Was that in the presence of *Henry*?

A. It was—He said, he thought I could make good men of the soldiers.

Q. Which of them said that?

A. *John*:—I said, I should be afraid to commit myself with any of them; but if I knew them, I should then do what I could in concert with them. He said, he believed, he could inform me of some I might depend upon—he told me, it was their intention to seize the camp, the artillery at *Chapelizod*, and the city of *Dublin* in one night.

(Q. By the Court. Whose intention?

A. *Our's* was his expression:—I understood the *United Irishmen*.)—He said, there was to be one hour and a half between the seizing of the camp and *Dublin*, and an hour between seizing *Dublin* and *Chapelizod*, so that the news of both might arrive at the same time. He told me, if I would call at eleven that night, he would give me the names of some men in the regiment.

Q. What regiment?

A. My own regiment.

(Q. By the Court. That meeting was in the morning?

A. In the morning before dinner.)—At that meeting in the evening, he told me, he had not been able to obtain the names for me; but that a man would call upon me in the camp to whom I was to give a pass, and that I might converse with him upon his return without reserve.

Q. Recollect, if you can, whether any thing more particular passed about the cause in hand?

A. I do not recollect any on that day.

Q. Who had the command of your regiment?

A. Col. *L'Estrange*.

Q. Did you ever communicate to any persons what passed at these interviews?

A. I returned to the camp immediately after each interview, and communicated the business that passed to
Col.

Col. *L'Estrange* and Capt. *Clibborn*—Sometimes I communicated it to Lord *Castlereagh* and Mr. *Cooke*.—On *Wednesday* the 16th, the *Colonel* was surprised, that no man had called upon me—he requested I would go to town and find out the reason: I came to town, and as neither of the Mr. *Sheares's* was at home, I left word, that I would call between five and six o'clock. I called between five and six, and was shewn into the library at Mr. *Sheares's* house.

Q. At the same house?

A. Yes: the younger *Sheares* came in, told me he wished to introduce me to a gentleman with whom I might consult and advise in his absence, as he must go down and organize *Cork*; he said, he had not been able to find out the names I wanted in the regiment.—He said, the rising in *Cork* was to be in such a manner, that the news might reach *Dublin* at the same time with the news of rising in other places, and that he was only waiting for the Executive to fix the day.

(Q. By the Court. Was the news of the rising in *Cork* to reach *Dublin* at the time of the rising there?

A. Yes.

(Q. By the Jury. Where was the Executive? Who were they?

A. I do not know; he did not explain, and I asked him no question.

Q. What did you understand?

A. The Executive Directory, who were sitting in *Dublin* in the same manner, as other committees were sitting.)—Mr. *John Sheares* appointed me to meet him next day, and that he would introduce me to that gentleman.

Q. Had you seen *Henry* at that meeting at all upon the 16th?

A. Not at that time—I went there next day, *Thursday* 17th, and met both the brothers.

Q. At the same house?

A. Yes, the same house.—I do not recollect any conversation of moment, until the gentleman came. I was introduced to him as to a Mr. *Lawless*, a relation of Lord *Clancurry*: That was the name he was introduced by.

Q. Was there any other present?

A. None but the two brothers.

Q. He

Q. He was introduced as the person Mr. *John Sheares* had been speaking of the day before?

A. I understood so. Mr. *Lawless* told me, he had been present some time before at a meeting of deputies from all, or composed of almost all, the militia regiments in *Ireland*; at which meeting, he said, there were two of our men; he did not know their names; but that if I would call between five and six upon Mr. *Sheares*, he would leave their names with him for me.

(Q. By the Court. Were the Mr. *Sheares's* present at this conversation?

A. They were both present, my Lord.)—He said, he would obtain the names from a man, who had been very active in making *United Irishmen*, and who had been very active in making some in every regiment that had been in *Dublin* for two years past.

Q. The two Prisoners were present at that meeting?

A. Both were present on that day. The elder *Sheares* told me, that the corps throughout *Ireland* were completely organized, and had all their Captains and Adjutants appointed. I called that evening to get the names which Mr. *Lawless* was to leave for me. I was shewn into the library, where Mr. *John Sheares* was in conversation with a man—Upon the man's going away, Mr. *John Sheares* gave me this note, which was to be a note of introduction to a Serjeant in our regiment, intimating to him, that I might be depended upon, and said he got it from the man he had been speaking to.

(Q. By the Jury. Is it in Mr. *Sheares's* hand-writing?

A. I do not know.)

Q. Is it directed?

A. It is directed to Serjeant *Connors*.

Q. Is there any other Serjeant of that name in your regiment?

A. I believe not.

Q. Before you quit Mr. *Lawless*, do you recollect any expression relating to the camp, or the neighbourhood of it?

A. I do; he remarked, that the trees to the right of the Camp would be very convenient for hanging people.

(Q. By

(*Q.* By the Court. Was that in the presence of Mr. Sheares?

A. It was, my Lord.)

Q. Have you in your recollection any direction given by Mr. Lawless or the Mr. Sheares's, as to what should be done at the time of the attack, or the line of conduct to be pursued?

A. Yes, my conduct was to be this:—I was to erect a standard upon the night to be fixed upon for the attack upon the camp, which was to be joined by all whom I had previously known to be *United Irishmen*; that no other person was to be spared, and they were not to be given the option of joining at the time of the attack. He gave me the name of a private, *Pat. Fennan*, at the time he gave me the note and appointed me to meet him the *Sunday* following, when he would introduce me to more friends of the cause.

Q. Did he say any thing respecting *Fennan*?

A. I understood, that *Fennan* and *Connors* were the two deputies whom *Lawless* mentioned.

(*Q.* By the Court. From whom did you understand that?

A. *Lawless* had mentioned, that he would leave their names with Mr. *John Sheares*, and those were the names which Mr. *John Sheares* gave to me.)—On *Friday*, I could not find *Connors*; but on *Saturday* I gave him the note, and asked him, did he know the man named in the note; it was *Arthur Hill*—he told me he did.

Q. What is become of *Connors*?

A. He is in confinement, I believe in the Castle guard-room.

Q. He has been made a prisoner?

A. He was about the 20th of *May*:—He said he would call upon me for a pass.

Q. Did you call upon Mr. *Sheares* again?

A. I did, upon *Sunday* the 20th of *May*. I found the elder *Sheares* at home, I told him what had passed between *Connors* and me, and that he would not know me.

Q. That is, would not open himself to you?

A. Yes:—He said he was much surprized at that, but attributed it to his caution; and he recommended caution to me, for that he and his brother escaped by their caution,
for

for Government then thought them inactive. He said there was a man at that time with *Connors* at *Lehaunstown* and that I should find no difficulty in conversing with him upon my return to the Camp. The younger *Sheares* produced a paper, upon which appeared to be written names, by way of memorandum—among them were three more names of our regiment.

Q. (*By the Court.* Did *John* come in?

A. He did.)—I do not recollect any conversation more of moment with *Henry*:—*John* came in and *Henry* went out—then *John* produced the paper—he mentioned the names as if reading them from the paper, and three of them corresponded with three serjeants in our regiment.

Q. (*By the Court.* What did he say of them?

A. He told me they were men I might depend upon as *United Irishmen*, and he mentioned their names to me as such.)

Q. Is there any thing else in your recollection?

A. He told me, he had that day called at *Lawless's*, and that he believed he had absconded, for he was denied to him. He said that a man had been out at the Camp on *Saturday* looking for me, to give me a letter, but could not find me. I asked him the contents; he said it was no matter, as I was then there, I would hear of it. He said the *Executive Directory* had directed him to tell me, they had come to a resolution to appoint me to the command of the *King's County* regiment.—He said I might promise to every man in the regiment that would join me, a portion of land in the *King's County*. He told me, that on the night of the rising in *Dublin*, the *Lord Lieutenant* was to be seized and all the *Privy Council*, separately in their own houses.—This conversation was in the presence of the elder.

Q. (*By the Court.* What part of the conversation?

A. All subsequent to his saying that *Lawless* had secreted himself.)—He said that when the *Privy Council* were all seized, there was no place to issue orders from, so as to counteract the rising; and that in case of a failure of the attack upon the Camp, on the march of the soldiery into the town through *Baggot-street*, they had a sufficient number of houses in *Baggot-street* in their interest, to shoot

L

them

them from, so as to render them useless; and that he expected throughout *Ireland*, that the militia regiments would join, from the accounts they had received of them:—that several men of the different regiments had promised different numbers, some ten men, some twenty, some thirty, and some one hundred, provided they had sufficient notice:—but that if they were called out with their officers, nothing could be done, as the other regiments would be too strong for them;

Q. This was mentioned by *John Sheares* in the presence of *Henry*?

A. Yes.

Q. He told you that the rising was to take place soon?

A. He did.

Q. Did he mention any reason?

A. He said, the country was tired with the prosecutions, and that the people threatened, if the rising did not immediately take place they would take the oath of allegiance, and give up their arms. The elder *Sheares* told me, that he had had a servant, who was the greatest coward he ever saw; but that he had been particularly active in making *United Irishmen*, particularly soldiers; but had quit him through fear and gone to *Cork*.—I do not recollect any thing further.

Q. Did you communicate the last conversation to any person?

A. Continually, every one:—I never had an interview with the Mr. *Sheares*'s, that I had not one with Colonel *L'Estrange* and Captain *Clibborn*, and my Lord *Castlereagh*.

Q. Where have you been since that time?

A. I have only been in *Wicklow* and *Wexford*, and the county of *Kildare*.

Q. Did any thing happen to you?

A. I was wounded in my foot, at *Slievebuy* mountain, where I was with Colonel *Walpole*. I could not go to my regiment, being ordered by Lord *Castlereagh* not to leave town; I volunteered, and had the command of the grenadier company in the *Londonderry Militia*, where they behaved in a most exemplary manner.

Q. Did you see either of the Prisoners after they were arrested?

A. I saw the younger.

Q. Where?

A. In the officer's guard-room at the Castle.

Q. Do

Q. Do you recollect upon what day he was made a prisoner?

A. The morning after the last conversation.

Q. Did any thing pass between you?

A. He asked me if his brother was taken? I said I did not know. He asked me if his papers were seized.—I said I did not know.—He said he hoped not, for there was one among them that would commit him.

Cross-Examined by Mr. CURRAN.

Q. What countryman are you?

A. An Irishman.

Q. What part?

A. The *King's County*.

Q. How old are you?

A. I believe between 27 and 28.

Q. Have you any hereditary fortune?

A. Every thing I have is hereditary.

Q. Then you have hereditary fortune?

A. I have hereditary fortune, which qualifies me to be a Captain in the *King's County Militia*, otherwise I would not be one.

Q. Do you mean to say that your estate is not diminished, or wasted?

A. Since I came of age, do you mean?

Q. Yes Sir?—

A. Certainly not.

Q. Had you ever been in any military situation before you were in the *King's County Militia*.

A. I had.

Q. Where?

A. In several places.

Q. Mention as many as you recollect?

A. I have been quartered.—

Q. You mistake me, Sir,—I mean, had you been in the army?

A. I was in the *English militia*.

Q. In what regiment?

A. In two; the *Somerset*, and the *South Middlesex* supplementary.

Q. Do you recollect how you came to quit the *Somerset*?

A. I do.—Having business in *Ireland* and not being able to obtain leave of absence.

Q. Have

Q. Have you always, when you talked of the subject, mentioned that as your reason for leaving the *Somerset Militia*?

A. I do not recollect having given any reason.

Q. I want you to say positively upon your oath, whether you did—or whether you do not recollect?

A. I do not recollect that I gave any other.

Q. Then you do not say you did not?

A. I do not believe I ever did.

Q. Do you swear positively?

A. I cannot say; but I believe I did not; and that was the reason.

Q. I ask you, will you venture to swear positively, that you never did give any other reason for your leaving the *Somerset*?

A. I cannot swear positively to what I may have said in jesting:—It is not impossible; but I believe I did not, and that was the reason.

Q. I beg you to recollect.—Did you in jest, or otherwise, give any other account of your leaving the regiment?

A. I cannot swear positively; but I do not believe I ever did;—It is so very trifling a thing; I might have said, I did not like quarters, or some such thing.

Q. How long after did you go into the *South Middlesex*?

A. About a year, I believe. I do not exactly recollect the time the supplementary were called out. I had a friend in *London*, who put down my name, knowing I was unemployed and would like it.

Q. I asked you, Sir, and you said you did believe in the existence of a future state of rewards and punishments. I ask you now upon the oath you have taken, have you always professed that belief?

A. Always.

Q. I wish to have your answer correct and precise—Do you say, you always professed it?

A. I do and did.

Q. From your education, you ought very well to understand the moral obligation of an oath. I presume you have often reflected upon it?

A. I have often thought of it; I hope with great respect.

Q. By virtue of your oath, have you ever expressed any other sentiment than respect of the obligation of an oath?

A. Never to my knowledge.

Q. Will

Q. Will you say upon your oath, that you never did upon any occasion deliberately say, that an oath ought to be binding so far, and no longer, than it was convenient?

A. Never.

Q. Did you in any manner deride the moral obligation of an oath?

A. I believe not.

Q. Do you know a gentleman of the name of *Bride*?

A. I do.

Q. Have you been in company with him?

A. Very often.

Q. Did you in his company deride the moral obligation of an oath?

A. I do not recollect.

Q. Were you in his company within the last six months?

A. I was.

Q. Were you in the College with him?

A. I was.

Q. In whose chamber?

A. I do not believe I was in any chamber with him these six months.

Q. Were you any time before that?

A. I have been in chambers with him.

Q. In whose chamber?

A. Mr. *Browne's*.

Q. Do you speak positively?

A. I do.

Q. Within how many months?

A. Within a year.

Q. Was Mr. *Bride* there?

A. I could not be in company with him if he were not there.

Q. O, I forgot, I believe my question was as to your being in company with him—Do you recollect any conversation in that company touching the subject of an oath?

A. I do not.

Q. You will be the best judge yourself whether you can undertake to give a positive answer to my question—Will you upon your oath say, that you did not in that company express any contempt or derision for an oath?

A. I am confident I never did.

Q. How long were you in the *South Middlesex*?

A. I do not know exactly; for I never saw my commission.

Q. You

Q. You mentioned that you had been much in the habit of buying political pamphlets from Mr. *Byrne*?

A. I said so.

Q. Had you been much in the habit of talking upon such subjects?

A. Of politics, do you mean?—Yes, I was.

Q. Had you been much in the habit of expressing your own political sentiments touching the state and affairs of your own country?

A. I generally used to chat there: when buying a book, I had some conversation about it.

Q. I do not mean to confine you to the time of buying a book, but generally?

A. Very often—When in company I used to speak upon that as upon other subjects.

Q. I should be glad to ask, if you can recollect, whether the general style of your observations was in favour of the conduct of government, or the contrary?

A. The contrary.

Q. That was the general and pretty uniform line of your conversation in company.

A. Generally so.

Q. Was it pretty strongly the contrary, or not?

A. I do not know that it was very strong—it had that tendency.

Q. Keeping at a due distance from ———

A. I hope so, Sir.

Q. From what, Sir?

A. Any thing wrong, or injurious to myself.

Q. Do you recollect—People sometimes make up their sentiments to toasts, and hand them about in that shape—Did you ever give *Republicanism*?

A. I do not recollect it—If that was the round, I gave it.

Q. If that was the round?—

A. Toasts are generally given in rounds—sometimes hunting—sometimes of other kinds—If that was the round, I gave it as well as I could.

Q. Do you recollect any thing about the Kings of *Europe*, as to either good or bad health?

A. Not the Kings of *Europe*.

Q. Some of them?

A. Yes, I have drank them.

Q. With

Q. With great affection?

A. I cannot say with great affection; I have drank my own King with regard.

Q. Have you had much political conversation with Mr. *Byrne*?—I suppose not——

A. Never, but when I was buying a book in his shop.

Q. That seems goes further than the title page with a bookseller—Did you make any particular professions to him?—I suppose not?

A. I do not recollect any till after the introduction to the Mr. *Sheares*'s.

Q. Never before, about your principles?

A. Never about my principles.

Q. The proposal to become acquainted with them was merely a wish of Mr. *Byrne*?

A. I do not know with whom the wish originated.

Q. He proposed it, you said?

A. I did say, he proposed it.

Q. You said, you had no idea of what the subject was, or whether any subject was talked of, between you and Mr. *Sheares*?

A. No, Sir; I said the contrary.

Q. When *Byrne* proposed it, you said you had no objection?

A. I did.

Q. Pray, Sir, do you know a gentleman of the name of *Drought*?

A. I do, a great many.

Q. Do you know the *Drought*, I mean?

A. I do not.

Q. Have you no conjecture of the *Drought* I mean?

A. I have.

Q. What *Drought* is it I mean?

A. I do not know whom you mean.

Q. What *Drought* did you guess at?

A. You would not take my guessing.

Q. I will—What *Drought* did you suppose I asked you about?—Do you recollect having called any Mr. *Drought* to your window?

A. I do; that gentleman is my first cousin.

Q. Then you know your cousin *Drought*—Had you any conversation with him when you called him up?

A. I had a good deal.

Q. For

Q. For what time?

A. Very near an hour.

Q. Do you recollect what the conversation was about?

A. Upon my word, I do not:—It was common place—the common news of the day—A good deal of it was professions of joy at having seen each other, for we had not seen each other for some time.

Q. Was this before or after you met with the wound?

A. It was after.

Q. Do you remember to have told him any thing that happened to you?

A. I suppose I told him all that happened to me.

Q. Did you tell him any that happened about two countrymen?

A. No, but about three.

Q. Did you tell him you had hanged any of them?

A. No, for that would not have been the fact.

Q. Did you tell him you had *tied* them up?

A. No.

Q. Or that you *ordered* them to be tied up?

A. No.

Q. Or that they were tied up?

A. I did:—I told him that one was tied up.

Q. For what purpose?

A. One was to be hanged, the other was to be flogged. We were going up *Blackmore Hill* under Sir *James Duff*—there was a party of rebels there—we met three men with green cockades—one we shot, another we hanged and the third we flogged and made a guide of.

Q. Which did you make the guide of?

A. The one that was neither shot nor hanged.

Q. Did Mr. *Drought* say any thing to you as to the cruelty of the transaction?

A. No: he might have said something of the distressed situation of the country.

Q. Did he say any thing as to what you could expect hereafter?

A. No, I do not recollect, that he did.

Q. Did you say to him, "I thought you knew my sentiments too well long since upon the subject of futurity?"

A. I do not recollect ever to have broached the subject of futurity to him. I always knew Mr. *Drought's* opinion of futurity.

Q. You

Q. You never conversed with him upon the subject of a future existence?

A. Never:—I do not recollect it.

Q. How long ago is it since the conversation you mentioned?

A. I do not recollect the day—it was since the 5th of June. Colonel *Walpole's* death was upon the 4th—but I should think it was a fortnight after that, because I was not able to go to the window for a fortnight.

Q. Then it was within a month—Can you undertake to say, that you did not say to him, “you know my sentiments upon futurity?”—

A. I said no such thing.

Q. Will you give me leave to ask you, had you ever been in any other military situation, a *civico-military* situation?

A. No.

Q. Did you know *Archibald Hamilton Rowan*?

A. I have seen him; but never knew him to speak to him.

Q. Were you in his corps?

A. Never.

Q. Do you recollect the *National Guards* in 1792?

A. I do not recollect any thing of it. I have heard of *Hamilton Rowan*; I was only just of age at that time.

Q. Were you in that corps?

A. Never.

Q. Did you make up the uniform?

A. Never:—I do not know the uniform. I might have had a coat answering the uniform; but I never made it up for the corps, nor did I ever see it.

Q. Did you wear in the year 1792 any dress like a uniform with green trowsers—buttons having a harp impressed without a crown, and green cockades?

A. Never. I had no green coat, nor buttons of that kind—I might have worn green when a boy.

Cross-examined by Mr. PONSONBY.

Q. How long have you been in the *King's County Militia*?

A. Since the 19th of January last.

Q. Have you declared it was in your power to bring over the *King's County Militia*, if there was a rising?

A. Never to any person but the *Sheares's*, and to *Byrne* after my introduction to them.

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Q. Do

Q. Do you recollect not having spoken favourably of the King of *England*. Did you ever say, "that if no other person could be found to cut off the head of the King of *England*, you would do it yourself?"

A. Never.

Q. Are you positive you never did?

A. Never.

Q. As you have been fond of buying new pamphlets as they came out, do you recollect to have bought the pamphlets of *Paine*?

A. I have.

Q. Have you read them?

A. I have read all that I got—I have not got them all.

Q. You have read the "Rights of Man" and the "Age of Reason?"

A. I have.

Q. Do you recollect having told any one, that they contained your creed?

A. No:—I do not recollect that I did.

Q. Are you sure you did not say it?

A. I did not say it, because I never thought it.

ANDREW KEARNEY, *Sworn.*

Q. Do you know Mr. *Henry Sheares* and Mr. *John Sheares*?

A. Yes, Sir;—I have seen them.

Q. Were you in company with either of them in the month of *May* last?

A. I was.

Q. With one, or with both of them?

A. One of them only.

Q. Which of them?

A. I believe the youngest.

Q. That is *John*?

A. Yes.

Q. What time were you in his company?

A. I do not recollect the time exactly.

Q. It was in *May* last?

A. It was.

Q. In what house were you in company with him?

A. A house in *Werburgh-street*, I believe it was.

Q. For

Q. For what purpose did you go to that house in which you met Mr. *John Sheares*?

A. I do not exactly know.

Q. What induced you to go there?

A. A person called upon me and desired me to go there.

Q. What business was it for?

A. I do not know.

Q. How many were there?

A. I do not remember.

Q. Were there five?

A. There were.

Q. Were there ten?

A. I do not know exactly.

Q. There were more than five?

A. There were.

Q. Did you know any of them?

A. I knew Mr. *Sheares*.

Q. Are you acquainted with the names of any others who were there?

A. I do not think I am to answer that.

Q. Was Mr. *Michael Reynolds* there?

A. I do not think I am to answer that.

Q. Mention, Sir, the name of any person you knew who was there?

A. There was a man of the name of *Corr*.

Q. Do you recollect the name of any other?

A. I believe there was a man of the name of *McClune*.

Q. Was there any other?

A. I do not recollect at present.

Q. Was there any conversation there in the presence of Mr. *John Sheares*?

A. Very little.

Q. Mention what it was?

A. I cannot recollect it.

Q. Am I to understand that you do not recollect it?

A. Not very perfectly.

Q. Endeavour to recollect?

A. I cannot bring it to my recollection.

Q. Was there any thing said by Mr. *Sheares*?

A. Not that I recollect.

Q. There was by others?

A. They had a paper and wrote something down.

Q. Pray,

- Q. Pray, Sir, what made you stagger there ?
A. I was sent there.
Q. You did not know the business ?
A. Not at that time.
Q. You knew it after ?
A. There was not much of it.
Q. Come tell what little there was ?
A. It tended towards mentioning, how many *United Irishmen* there were in *Dublin*, or something to that purpose.
Q. Was that upon the paper ?
A. Not upon the paper, but it was the subject of the writing.
Q. How was the number to be ascertained ?
A. By different people.
Q. Try, how ?
A. The people there were to tell the number of them.
Q. Was any number told by the persons there ?
A. I believe so.
Q. Are you positive there were ?
A. There were numbers told.
Q. Numbers of what ?
A. The numbers of *United Irishmen*.
Q. The numbers in *Dublin*, or in *Ireland* ?
A. In *Dublin*.
Q. Did you hear any number mentioned ?
A. I heard a few, a part of them named.
Q. Do you recollect what number ?
A. I do recollect one :—1100 by one man.
Q. Do you recollect any other to have been mentioned ?
A. I do not recollect.
Q. (*By the Jury.* Who mentioned 1100 ?
A. I am not bound to answer that—Suppose it was myself.)
Q. Were these returns taken down ?
A. I think they were : I saw a paper upon the table ; and I do not recollect immediately the purpose of it.
Q. Was the paper upon the table ?
A. It was.
Q. There was pen and ink ?
A. There was :—I do not recollect that Mr. *Sheares* did any thing in it.

Q. In

Q. In whose hand was the pen ?

A. It was in *Lawless's*.

Q. Did he write any thing ?

A. He had the pen in his hand—but whether he wrote or not, I cannot tell.

Q. What was his Christian name ?

A. I do not know, I never saw him since or before, and would not know him.

Q. How long did this business last ?

A. Half an hour.

Q. Was there any other business transacted besides taking these returns ?

A. I do not recollect.

Q. What description of men were there—Had they any particular name, or office ?

A. I believe they had—they were officers.

Q. Did you understand they were all officers ?

A. Not all ; I was told some of them were.

Q. In what capacity did you go there ?

A. As an officer.

Q. Was there any other ?

A. There was.

Q. Who ?

A. *Corr.*

Q. What rank had he ?

A. A Colonel.

Q. In the King's army ?

A. No, no.

Q. In what army ?

A. In the *United Irishmen's* army.

Q. Do you recollect any other officer ?

A. I believe there was *McClune*.

Q. What rank had he ?

A. A Colonel.

Q. Did they make returns ?

A. I believe so, I understood so:—but I do not recollect the numbers.

Q. Do you recollect any thing near the gross return or amount ?

A. I do not : I did not hear it.

Q. One man returned 1100 ?

A. Yes.

Q. Were you told the purpose of going there ?

A. No, but was desired to go there.

Q. What

- Q. What hour was it ?
A. In the morning.
Q. Who took away the papers ?
A. I do not know, I left the meeting.
Q. Did you leave Mr. *John Sheares* there ?
A. I do not know exactly.
Q. Was he present when any of the returns were made ?
A. I think so.
Q. You must speak positively.—Can you or not ?
A. To the best of my belief he was there; but I think I cannot speak positively.

This witness was not cross-examined.

Here the note given by Mr. *J. Sheares* to Captain *Armstrong*, for Serjeant *Connors* was read:—

“ Arth^r. Hill comp. to Serj^t. Connor takes the liberty of
“ introducing a particul^r. friend of his to him; My friend
“ will disclose his sentiments to you, which you may with
“ every propriety intrust him with, answering every ques-
“ tion he proposes.

“ I’ll see You on Sunday next.”

(Directed)

“ Serj^t. Connor”
“ 5, Bride St.”

(And on the back was
also this name)
“ Pa^r. Fennan.”

ALDERMAN ALEXANDER, *Sworn*.

- Q. Look at that paper, and tell whether you ever saw it before ?
A. I did.
Q. Where did you see it first ?
A. In Mr. *Sheares*’s parlour.
Q. Do you know the Mr. *Sheares* at the bar ?
A. I know one of them.
Q. At their house you found the paper ?
A. I believe so.
Q. What street ?
A. In *Baggot-street*.
Q. Upon what day ?
A. Upon the 21st of *May* last.

Q. In

Q. In what part of the house did you find it?

A. It was in a small writing box upon a table in the parlour.

Q. Was that the library or study?

A. It was a study—there were many law books there.

Q. Did you see either of the Mr. *Sheares's* there?

A. One of them.

Q. Which of them?

A. That gentleman (pointing to Mr. *Henry Sheares*.)

Q. Did you speak to him about the desk, or the paper?

A. I had no conversation with him about the desk or the paper.

Q. Did he say any thing about it?

A. He said there was no paper there that would injure him in any manner or shape.

Q. Was that before you found the paper?

A. I told him it was my duty to examine all his papers.—He told me, I might do so, for that he had no paper in his study or house, that could injure him in any manner or shape. Mr. *Atkinson*, one of the Chief Constables, was with me at the time.

Q. You are sure that is the paper you found?

A. I am.

Cross-Examined.

Q. You found that paper in a box?

A. In a small writing box upon the table.

Q. Not locked?

A. It was shut down, but not locked: there was a small reading desk inside the box, which was lifted up, and this paper was found under it.

Q. There was no attempt made by Mr. *Henry Sheares* to secret any paper?

A. None whatever.

Q. Was Mr. *John Sheares* at home?

A. No.

Q. Were you any time at the door before you got in?

A. Three or four minutes.

Q. Mr. *Henry Sheares* might have secreted or destroyed any paper in that time?

A. He might.

Q. He

Q. He might have secreted himself?

A. I do not think he could, because I had a guard at the front and rere of the house.

Q. He did not know that?

A. I do not suppose he did.

Q. He made no attempt to fly?

A. No.

Q. Did Mr. *Henry Sheares*, when you found that paper, betray any symptoms of guilt, as if alarmed by it?

A. I cannot say he did.

Examined again on the part of the Crown.

Q. At what hour of the day was it you went there?

A. About eight in the morning.

Q. Did you rap in any uncommon way, or as gentlemen usually do?

A. Mr. *Atkinson* rapped at the door in the usual way—after some delay I got through the adjoining houses and put soldiers in the yards. I then went to the door. Mr. *Atkinson* told me a woman had looked out of the window; we then rapped again.

JOHN DWYER, Esq. Examined.

Q. Are you acquainted with the Prisoners or either of them?

A. With both of them.

Q. Are you acquainted with the hand-writing of either of them?

A. I have seen Mr. *Henry Sheares* write very often. I have seen Mr. *John Sheares* write, but not so often.

Q. Look at that paper (*shewing the paper found by Alderman Alexander,*) and say, whether you can form a belief as to whose hand-writing it is?

A. From my recollection of Mr. *John Sheares's* hand-writing, it is his: but I am not perfectly well acquainted with it.

Mr. CURRAN. My Lords, there is not sufficient ground to give this evidence—he must establish a knowledge of or acquaintance with the hand-writing, before he proceeds to tell whose it is.

Mr.

Mr. McNALLY. My Lords, in *Francis's* case, a witness was examined, and a paper produced, which, he said, was the hand-writing of the Prisoner—he was asked, whether he gave that evidence upon a recollection of the writing or an acquaintance with it.—He said, “I have seen writing of the Prisoner’s, and from my recollection of it, I believe this to be his writing.”—That evidence has been held to be inadmissible.

Lord CARLETON. This is totally a different case.—In that there was no evidence of his having seen the Prisoner write;—but that he had seen writing of his, and from a recollection of that he believed the paper produced to be the same hand.—But here the witness speaks from a recollection of the hand-writing of a person whom he has seen write; though he has not so strong a recollection of the hand writing of one, as he has of the other.

Q. Do you believe that to be the hand-writing of Mr. John Sheares?

A. I do believe it: if I did not, I would not come here.

Q. Look at this other paper, (*shewing a letter found by Sheriff Archer, in Thomas-street. Vid. post. 91.*)

A. I believe this to be the hand-writing of Mr. John Sheares.

Q. Look at this paper (*shewing a letter found upon the person of John Sheares, with memorandums on the back of it. Vid. post. 94.*)

A. I believe this writing on the back of the letter to be Mr. John Sheares’s hand-writing.

Q. Where has Mr. John Sheares resided for some time back?

A. I believe at his brother Henry’s house in *Baggot-street*.

Cross-examined.

Q. Have you been any considerable time acquainted with the Prisoners.

A. I have.

Q. Have you been in any habits of intercourse with them?

A. I have:—I have had a great deal of dealing with the elder brother and some with the younger.

N

Q. Did

Q. Did you consider them as men of integrity?

A. I never met men in dealing who appeared to me to have more integrity—they appeared to me to be men of honour and integrity.

(Q. *By the Court.* Were they money dealings?

A. Yes, my Lord, I bought an estate—)

Q. You have always considered them as honourable men yourself, and they were esteemed so by others?

A. I always considered them as such myself.

Mr. SHERIFF ARCHER, Sworn.

Q. Look at that letter—have you seen it before?—
(*shewing one of the papers proved by Mr. Dwyer.*)

A. I have.

Q. Where did you get it?

A. I got it in the private office of Mr. *John Cormick*, *Thomas-street*, it was sealed and I broke open the seal of it.

Q. When was this?

A. *Sunday 20th of May.*

Q. What is become of *Cormick*?

A. He is fled.

This Letter was then read:—

“ Dear Sir,

“ I beg leave to Introduce the Bearer Mr. C. to your Confidence, as a gentleman on whose honour you may perfectly rely.

Yours, J. S.

“ *Conor did not Come to Town as I expected*
“ *yesterday.*”

(*Directed*) “ *Capt. Armstrong.*”

The paper found by Alderman *Alexander* was then read.

Note. The words in Italics were interlined: These between Crotchets were struck across with a pen.

“ *Irishmen,*

[“ Your Country is free; all those Monsters who
“ usurped Its Government to oppress its people are in our
“ hands, except such as have]

“ Your

“ Your Country is free and you are about to be avenged
 “ [already] that Vile Government which has so long and
 “ so Cruelly oppressed You, is no more; some of its most
 “ Atrocious Monsters have already paid the forfeit of
 “ of their Lives, and the rest are in our hands [waiting
 “ their fate.] The National Flag, *the Sacred Green*, is
 “ at this Moment flying over the Ruins of Despotism, and
 “ that Capital which a few hours past [was the Scene]
 “ Witnessed the Debauchery, [the Machinations] plots
 “ and Crimes of your Tyrants, is now the Citadel of
 “ Triumphant Patriotism and *Virtue*. Arise then, United
 “ Sons of Ireland; arise like a great and powerful people,
 “ Determined to [live] be free or die, Arm Yourself
 “ by every means in your power, and Rush like Lions on
 “ your Foes; Consider, that [in Disarming your Enemy]
 “ for every Enemy you disarm, you arm a friend, and
 “ thus become doubly powerful; In the Cause of Liberty,
 “ inaction is Cowardice, and the Coward shall forfeit the
 “ property he has not the Courage to protect, Let his
 “ Arms be Seized and Transferred to those Gallant
 “ [Patriots] *Spirits* who want, and will use them; Yes,
 “ Irishmen, we swear by that eternal Justice, in whose
 “ Cause you fight, that the brave Patriot, who survives
 “ the present glorious Struggle, and the family of him
 “ who has fallen, or shall fall hereafter in it, shall Receive
 “ from the hands of a grateful Nation, an Ample Recom-
 “ pence out of [those funds] that property which the
 “ Crimes of our Enemies [shall] have Forfeited into its
 “ hands, and his Name [too] shall be Inscribed on the
 “ National Record of Irish Revolution, as a glorious Ex-
 “ ample to all posterity; *But we likewise swear to punish*
 “ *Robbery with death and Infamy.*

“ We also swear, that we will never Sheathe the Sword
 “ until every [person] being in the Country is restored to
 “ those equal Rights, which the God of Nature has given
 “ to all Men, - Until an Order of things shall be esta-
 “ blished, in which no Superiority shall be acknowledged
 “ among the Citizens of Erin, but that [which] of Vir-
 “ tue and Talent [shall Intitle to.]

[“ As for those degenerate Wretches who turn their
 “ Swords against their Native Country, the National
 “ Vengeance awaits them: Let them find no quarter un-
 “ less they shall prove their Repentance by *speedily* desert-
 “ ing, Exchanging from the Standard of Slavery, for that
 “ of Freedom, under which their former Errors may be
 “ buried

“ buried, and they may Share the Glory and advantages
 “ that are due to the Patriot Bands of Ireland.]

“ Many of the Military feel the love of Liberty glow
 “ within their Breasts, and have [already to] joined the
 “ National Standard; receive [those] with open Arms,
 “ such as shall follow so Glorious an Example, they Can
 “ render signal Service to the Cause of freedom, and shall
 “ be rewarded according to their deserts: But for the
 “ Wretch who turns his Sword against his Native Coun-
 “ try, let the National Vengeance be Visited on him, let
 “ him find no Quarter, Two other Crimes demand——

“ Rouse all the Energies of your Souls; call forth *all*
 “ the Merit and abilities which a Vicious Government
 “ Consigned to obscurity, and under the Conduct of your
 “ Chosen Leaders March with a Steady Step to Victory;
 “ heed not the Glare of [a Mercenary] hired Soldiery, or
 “ *Aristocratic Yeomanry*, they Cannot stand the Vigorous
 “ Shock of Freeman, [close with them Man to Man, and
 “ let them see what Vigour the Cause of freedom can.]
 “ Their Trappings and their Arms will soon be Yours,
 “ and the Detested Government of England to which we
 “ Vow eternal hatred, shall learn, that the Treasures
 “ [she, it] *they* Exhausts on [their mercenary] its accouter-
 “ ed Slaves for the purpose of Butchering Irishmen, shall
 “ but further Enable us to turn their Swords on its devot-
 “ ed head.

“ Attack them in every direction by day and by Night;
 “ avail yourselves of the Natural Advantages of your
 “ Country, which are Innumerable, *and with which you*
 “ *are better acquainted than they*; Where you Cannot Op-
 “ pose them in full force, Constantly harass their Rear
 “ and their flanks; Cut off their provisions and Magazines
 “ and prevent them as much as possible from Uniting their
 “ forces; let whatever Moments you Cannot pass in]
 “ Devote to fighting for your Country, be [Devoted to]
 “ passed in learning how to fight for it, or preparing the
 “ means of War, for War, War alone must occupy
 “ every mind, and every hand in Ireland, until its long
 “ oppressed Soil be purged of all its Enemies.

“ Vengeance, Irishmen, Vengeance on your Oppres-
 “ sors—Remember what thousands of your dearest friends
 “ have perished by their [Murders, Cruel plots] *Merci-*
 “ *less Orders*; Remember their burnings, their rackings,
 “ their torturings, their Military Massacres, and their
 “ legal Murders. Remember ORR.”

MAJOR

MAJOR SIRR, *Sworn.*

Q. Have you ever seen Mr. J. Sheares?

A. I have.

Q. Where was he arrested?

A. I arrested him in *French-street*, at the house of Surgeon *Lawless*.

Q. Did you ever see that paper?—(*showing him the letter, the memorandums upon the back of which were proved by Mr. Dwyer to be the hand-writing of Mr. J. Sheares. Vid. next page.*)

A. I did.

Q. Where did you find it?

A. I got it upon the person of Mr. *John Sheares*.

Q. Where is Surgeon *Lawless*?

A. I do not know—He is not to be found—I imagine he is fled—I have endeavoured to find him.

Cross-examined.

Q. How long after the taking of Mr. *John Sheares*, did you find this paper—did you search him immediately?

A. I think I did.

Q. Are you sure—recollect yourself?

A. I did.

Q. Do you recollect whether you searched him at all?

A. I did.

Q. Did not Mr. *Sheares* hand papers to you?

A. I desired him, I believe, to hand me what papers he had, and I think he gave that paper to me.

Q. Did not some time elapse from your taking him into custody and getting this paper?

A. It is possible there was a small time.—It was in *Lawless's* house I got the paper from him.

Q. Do you recollect, that you searched *Lawless's* parlour before you received the paper from Mr. *Sheares*?

A. I searched it in part—I was searching it when Mr. *Sheares* rapped at the door.

Q. You were in the house before Mr. *Sheares* came?

A. I was.

Q. You opened the door?

A. A gentleman with me opened the door.

Q. You told him you had a warrant against him?

A. I told him he was my prisoner.

Q. He made no resistance?

A. No.

Q. He

Q. He made no attempt to fly?

A. No, by no means.

Q. Mr. *Sheares* must have known you when the door was opened?

A. I think so.

Q. You are much known as a public officer?

A. I believe so.

Q. You then proceeded to search the room, and after that desired him to give up his papers, which he did?

A. To the best of my recollection, he handed them to me.

Q. Had you your eye upon him the whole time you were searching the room?

A. I had not.

Q. He had an opportunity to tear a small paper?

A. He might have done it unknown to me; but there was a person with me whom I desired to watch him.

Mr. *John Sheares*. Did I shew any uneasiness when apprehended?

A. You did not.

Q. Did I shew any reluctance to going with you?

A. No.

The paper found by Major *Sirr* was here produced, and the memorandums upon it proved by Mr. *Dwyer* to be the hand-writing of Mr. *John Sheares*, were read as follows:—

Bourke	-	800	
Garraty	-	1200	
Howard	-	1400	
Castleknoek	-	700	
Belruddery	-	2000	org. 2000 not org.
Rathdown	-	1000	
Nethercross	-	1000	
		8100	

Mullins.
Mc Donald.
Lt. Hobbes.
Capt. Crofton.
Doctr. Wilkinfon.

Mr. Clune.

CAPTAIN

CAPTAIN CLIBBORN, *Sworn.*

Q. You are in the *King's County Militia*?

A. Yes;—a Captain.

Q. Are you acquainted with Capt. *John-Warneford Armstrong* who has been examined here to-day?

A. I am, Sir.

Q. Do you recollect his applying to you upon any particular occasion about the 10th of *May* last?

A. I recollect his applying to me, but I cannot say precisely the day of the month.

Q. Do you recollect the day of the week?

A. Not perfectly.

Q. Upon what subject did he apply to you?

A. He met me going into the *Castle-yard*—told me he wished to consult me upon business—said he had been at *Byrne's* shop, who asked him, if he had any objection to be introduced to Mr. *Sheares*—that he said he had no objection. I told him, I saw no objection to his meeting any man. He then said, that as he had been in the habit of talking foolishly, it would be unwise to talk with *Sheares*, lest it might hurt him with the regiment.—He afterwards came to the camp—said, he wished to speak with me and Colonel *L'Estrange* upon business—We had drank rather much to talk upon business, therefore postponed it till morning, and the Colonel asked him to breakfast.—We met in the morning at Colonel *L'Estrange's*—he told the Colonel, that he had met one of the Mr. *Sheares's* at *Byrne's* shop—who introduced him to Mr. *Sheares*—that Mr. *Sheares* spoke to him upon different subjects, and then asked him, if he had any objection to be introduced to his brother—that Capt. *Armstrong* replied, he had not—they appointed a meeting—He then said, as well as I recollect, that one of the *Sheares's* talked to him about the regiment—how they were inclined, and fixed some future day, I cannot exactly say what, for a future interview.

Q. You may mention the general purport of the conversation?

A. That Captain *Armstrong* should interfere and use his endeavour to bring over our regiment.—I said, such a business should not be kept a secret from the Lord Lieutenant, and advised the Colonel to go to Lord CAMDEN that day.

Q. Did

Q. Did you ever meet Captain *Armstrong* after he had alleged he had any other meeting?

A. I did:—he regularly mentioned to the Colonel and to me every meeting he had with them.

Q. How often did that occur.

A. Four or five times I believe, and last of all, he called the Colonel and me together and shewed his notes, which I thought exact copies of what he had at different times told us.

Q. How long have you known him?

A. I have a sort of an acquaintance of him since his childhood—I have dined with him and met him in company—but never was intimate with him, till he joined our regiment.

Q. You were well acquainted with his general character and conduct?

A. I was.

Cross-examined.

Q. He produced his notes to you?

A. He did.

Q. He had verbally communicated to you what passed at those meetings—how long after that did he produce these notes?—How long after the first communication was it before he produced the notes?

A. I cannot be positive—I suppose 10 or 12 days.

Q. When he met you in the morning he did not produce the notes?

A. No.

Q. Nor at any time till after Mr. *Sheares* was committed?

A. No:—He told me he took them down regularly.—I cannot say, whether he did or not.

Q. Is it not extraordinary that he should communicate such matters verbally, and not state them from his notes taken?

A. I do not think so—He is in the habit of taking minutes of the transactions of his life—he keeps a sort of journal.

Q. When he came to the Camp, did he say, he had dined with Mr. *Sheares*?

A. As well as I recollect he told me he dined with Mr. *Sheares* one Sunday.

Q. Did

Q. Did he say, he met Mr. *Sheares* and a family of three children there ?

A. No.

Examined again on the part of the Crown.

Q. Have you a Serjeant of the name of *Connor* ?

A. We have; he is at present in the *Prevôt* in the Barrack.

BENJAMIN RIKY, Esq. Deputy Clerk of the Crown,
Sworn.

Q. Do you recollect the day that Judge DAY went down to the last adjournment of the Affizes of *Naas*.

A. The 22d of *May*—I think the Affizes were adjourned to the day after the last day of term.

Here the case was closed on the part of the Crown.

MR. PONSONBY. Do your Lordships conceive it possible to finish this trial without an adjournment ?

LORD CARLETON. I hope so;—we will go on as long as we can.

Some further conversation took place relative to an adjournment, but the Court, for the present, determined to proceed.

MR. PONSONBY. *My Lords, and Gentlemen of the Jury.* In this case, I am counsel for the Prisoner, Mr. *John Sheares*, and I owe it to the kind accommodation of the gentlemen concerned with me, that I have the honour of addressing you at this stage of the trial. The stating of the case on the part of the Prisoners would necessarily have fallen, in the first instance at least, to the Counsel near me; but as I am more than usually exhausted by this trial, he has permitted me to take a part now, knowing that if I were detained till to-morrow morning, I should be unable to go through it.

My client, gentlemen, has peculiar difficulties to labour under—not only the unfitness of the advocate, to whom the stating of his case has been confided, but the extraordinary circumstances of the times—the peculiar and unhappy state of this country in the moment in which you are impannelled to pass upon his life, do necessarily

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subject

subject him to difficulties, which scarcely any Prisoner ~~we~~ have heard or read of in this our native country has been liable to.

I do believe that no Bench can be found, or Jury impannelled, less likely to feel a prejudice against the Prisoner from any extrinsic circumstances, than the Bench which now presides, or the Jury which is now in the box. But I do not conceive it possible, that any 12 men can be impannelled at such a season as this, and find their minds wholly free from all bias and prejudgment against a man, accused of fomenting the rebellion in this country. Whatever degree of propriety, virtue, temper, or understanding I may be disposed to attribute to you (and I am disposed to attribute to you what I can justly attribute to any man) I cannot persuade myself, that you can come to this trial with that cool judgment with which you might have come at a future period.

I know extremely well, that it is not the wish of those, who conduct the prosecutions, to aggravate the case of the Prisoners.—I am too well acquainted with them to suppose it. Their duty impels them necessarily to this trial:—but that necessity does not at all lessen the difficulty, under which the person tried actually labours.

Gentlemen, the indictment with which the Prisoner is charged, accuses him of two species of treason; first, for compassing and imagining the death of the King—and secondly, for adhering to his enemies.

I wish, under the correction of the Court, to offer some observations to your consideration upon these two species of treason:—The first is, that of compassing and imagining the King's death:—to compass and imagine the death of the King, if the person, who has imagined it, shall be proved to have done so by acts and deeds forwarding that purpose, and demonstrating it, is undoubtedly liable to the penalties of treason. But I wish you to consider, whether it be possible for any evidence given in this cause, or from the nature of the things themselves, that a person accused of treason endeavoured to be substantiated as this has been, can, in point of law, be said to be guilty of compassing and imagining the death of the King.

“To compass”—is no mysterious, or allegorical language of the law. It means the actual death of the natural person of the King:—it means not any attack upon the representative state of the Executive Government—
but

but the natural and actual dissolution of his mortal frame by violent means; and I really do not well know, how in this country, where his Majesty's person never is, and never does exist, a man can be said to compass and imagine his death, if the overt acts necessary to that death are confined to that realm in which the natural person of the King never exists.—I know extremely well, that in the kingdom of *Great Britain*, for example, a compassing of the death of the King can be well proved by overt acts within that country, which though not immediately going to prove the purpose of direct assassination, or attack upon the person, do in point of law amount to a compassing of his death. An attempt to imprison the King amounts, beyond all doubt, to a compassing of his death—an attempt to depose him amounts to a compassing of his death—an attempt to force the King by violent means to change particular measures will amount to a compassing of his death. But the reason of all that is plain; because the natural person of the Sovereign is resident in that country in which the acts are done, and if the conspirators *can* get the person of the King within their power, it will be matter for the Jury to consider, and for the Court to direct the Jury upon, whether that deposition, or imprisonment, might not lead to a dissolution of his natural person.

But suppose the treason alleged here to be true, how could that affect the King?—He is not within this country; he is not within the reach of the conspirators—no act committed by them in this country can lead to the destruction of the natural person of the King, and no act but what leads directly, or by consequence in point of law to that, can amount to that species of treason charged in the first count.

It has been sworn, gentlemen, that the Prisoner intended to seduce soldiers, and to raise armed men, and rebellion.—If he succeeded, (and rebellion has now existed for two months within this land) how could that affect the natural person of the King?—Let me put this case in another point of view. If the law be thus in *Ireland*, that overt acts of the sort laid in this indictment, and endeavoured to be proved, did amount to a proof of compassing the King's death, it must be so in every part of his dominions, governed by the common law of *England*.—It must be so in *Jamaica*, *Grenada*, and *St. Vincents*, because in all these places the common law of *England* runs,

where local privileges, or the parliament of *Great Britain* have not otherwise ordained. Suppose a man raised a rebellion in the island of *St. Vincent*, could that mean a compassing and imagining the death of the King?—the death of a person resident probably 4000 miles from the place? Could the force employed in such a rebellion be such as could in point of common sense, or judgment of law, amount to a proof of compassing the King's death?

If, gentlemen, this construction contended for in this case by the Counsel for the Crown be true; a man may be alleged to be a traitor, not only here in *Ireland*, but in every the most remote part of the King's dominions—in the smallest spot of land, having a distinct, local government. And yet it is difficult to conceive, how the force of rebellion in this small remote spot of land can affect the King's person, or how the rebel can be charged with accomplishing that, which it is impossible for him to bring about. This constructive killing of the King is extremely different from actual killing. I do not mean to say, that if a man plans the actual assassination of the King, in the most remote part of his dominions, and sets out with that intent, he might be justly convicted upon the first count in this indictment. But this case is different from that—because here there is no evidence of an actual design against the King; it is only raised by inference from the rebellion charged to be excited against him. Then, gentlemen, it is for you to determine from the evidence already before you, and that which you will hear, whether the Prisoner did compass the King's death? If the Prisoner had succeeded in all that is charged against him, if every tittle of the evidence be taken for granted, if it were all perfectly true, all that was planned and alleged might be executed by him, and yet the King might have descended to his grave in a good old age, untouched, unaffected by them.

This, gentlemen, is a species of treason which can scarcely be supported in the realm of *Ireland*, without evidence to prove an actual design against the King:—for the construction of law, which takes place in *England*, forming conspiracies to subvert the Government, to change measures, to depose the King is applicable to *England*, because the royal person is actually resident there, and can be got into the possession of the conspirators:—that construction is inapplicable to *Ireland*, because no act of the
conspirator

conspirator can enable him to subject the royal person to his power or to destruction. And, gentlemen, you are not to suppose, that in *Ireland*, the King's Government is less guarded than it is in *England*, or that it is less dangerous to have recourse to force against the measures of his Ministers than in *England*, because I contend that the construction of the statute of treason is such as I argue it to be; because there is another section in the same stat. which in all the cases I have put will most effectually protect the public authority and the King's government—namely, that clause making it treason to levy war against the King. All these forcible means, if proved, do amount to a levying of war against the King, and as much treason, as compassing his death. And therefore, gentlemen, no insecurity follows to the Government, or to authority from the construction which I contend for upon the first clause.

Gentlemen, the next charge in this indictment is for adhering to the King's enemies:—that is an offence within the scope of the same law, as much as either of the others I have mentioned. The indictment indeed in this case charges, that his Majesty is at war with *France*, and it charges the Prisoners with adhering to the men of *France*, by becoming members of a Society formed for that purpose. But there is not one syllable of evidence applying to the charge, that the Prisoners adhered to the King's enemies, or that there was any conversation between the Prisoners and the persons exercising the powers of Government there. There has been no witness produced to shew, that there was any correspondence or mutual intercourse intended, or that any communication was had, or intelligence conveyed. On the contrary, the object sworn to, if it were believed, was to be carried by *Irish* force alone. The witness said there was no foreign aid solicited, but that insurrection was to be had, and the object was to be accomplished by domestic force alone. How then, gentlemen, can you find, that the Prisoner was adhering to the King's enemies, whom the indictment describes to be, the Government of *France* and the men of *France*. The charge is not for adhering to *any persons* who may be at war, or in rebellion against the King—but it is for adhering to the King's foreign enemies, exercising the power of Government in *France*, and carrying on war against the King. Then how can you find, that
the

the Prisoner did adhere to those enemies, when the witness for the Crown swears, that the object was to act without *their* assistance, and to carry their scheme by *Irish* force alone?

If, gentlemen, you should be inclined to listen to the evidence for the Crown, it may shew criminality in the conduct of my client. But, gentlemen, it is the law of this country, that a man cannot be convicted for a crime committed, unless that crime be charged against him in the form of an indictment. It is the privilege of the subject, that his crime shall be alleged against him, it must be reduced to plain and intelligible language; it must be defined strictly according to the known laws of the land, and that crime must be supported by evidence directly applicable to it; so that a man must be convicted by a judgment *secundum allegata & probata*—so that by our law, if a man were to be indicted for one crime, and put upon his trial upon that accusation, if the evidence went to convict him of 1000 crimes, and did not prove him guilty of that specific offence for which he was indicted, he would be deemed as much an innocent man in point of law, as a man who had never committed any offence whatever.

So here, gentlemen, if you believe all the witnesses, the evidence proves the offence of levying war against the King. But he is not indicted for that offence, and could not know how to defend himself against such a charge.—He is first charged with compassing the King's death, which he could not accomplish in this country;—and next he is charged with adhering to the King's enemies, which the King's own witness has disproved.

Here, gentlemen, let me with great humility, caution you against what may be a fair and justifiable feeling from the unfortunate situation of the country; it may be a natural and unavoidable feeling—it must be difficult to suppress a strong feeling against those, who are supposed to have occasioned these troubles, and though you contemplate the present calamitous situation of the country, you must not suffer that to carry you so far, as to convict the Prisoner of a charge of which he is accused, but which is unsubstantiated by the evidence in this case.

Gentlemen, adherence to the King's enemies may be proved by several different ways:—It may be proved, that a man has given intelligence to those carrying war against the King to enable them more effectually to accomplish
their

their hostile purposes against the King—or he may send them pecuniary supplies, or have men raised for their service—in short, any act of assistance, or any act demonstrating, that the person accused has done something useful to those enemies in the war carried on against the King, will amount in point of law to an adherence, if the witness be believed.—But in this case, every species of adherence to the King's enemies, charged by the indictment stands completely without proof, and indeed, so far as any thing has been said about adherence to the King's foreign enemies, the charge stands negatived by the witness. The evidence might tend to prove the Prisoner guilty of another species of treason, but it does not prove him guilty of that of which he is indicted.

Gentlemen, it is not my province to expatiate much upon the evidence, which has been, or shall be, given. Luckily for the Prisoner that department is in the hands of a person who will execute it much more ably than I could.—But a few observations I shall submit to you upon the evidence of the principal, indeed, I may say, the only witness, Captain *Armstrong*, for he is the only one, who attempted to prove the charge against the Prisoner, supposing him to have been properly indicted.

It appeared by the story, which he told us, that the first acquaintance he had with Mr. *Sheares* was on the 10th of *May*—and upon the 20th or 21st Mr. *Sheares* was arrested; and yet in the course of that short acquaintance, if you can believe him, Mr. *Sheares* did let him into all the plots and conspiracies he mentioned!—I have not known a stranger story than he told. He said he was introduced by Mr. *Byrne* and yet Mr. *Byrne* was utterly unacquainted with his principles—he said that Mr. *Byrne* chatted with him about books or pamphlets, but they had no further conversation; and yet, if you believe the rest of the story, the object of Mr. *Byrne*'s proposal must have been, because he thought him a person likely to enter willingly into the schemes, which the others entertained. Says *Byrne*, “this is a *true brother*, in whom you may repose entire confidence.”—Strange!—that Mr. *Byrne*, who had never conversed with Captain *Armstrong*, by Captain *Armstrong*'s own account—who was perfectly ignorant of Captain *Armstrong*'s principles, by Captain *Armstrong*'s own testimony, should have so far known the secret workings and movements of Captain *Armstrong*'s mind, as to have declared upon the
first

first interview, "that he was a true brother in whom they might repose all their secrets!" These secrets, if you believe the Captain were not light ones—they were not the tittle tattle of a tea-table blasting a lady's reputation, or raising the gallantry of a man of fashion—but they were such as endangered the lives of those who meddled with them—And yet, at the first interview, Mr. *Byrne*, who knew nothing of Captain *Armstrong*, introduced him to the Messrs. *Sheares's* as a person in whom they might repose their properties and their lives—and the Messrs. *Sheares's* did not hesitate at the first interview to give up their lives and properties into the power of Captain *Armstrong*!—No private interview had been had between them before—no secrecy was even demanded—no precaution taken to guard against him—no enquiry, whether he was a person embarking in the same cause,—but at the very first interview they committed their lives and fortunes to his discretion!—It *may* be true!—But it is the strangest account I ever heard.

Let me put a most unlikely case—that one of you was embarked in treason—would you at the first interview with a stranger, more especially if he wore the livery of the King, and was attached by every tie to his service, put your life into his hands?—I think you would not do so: and because you would not do so, you must require some other evidence than that of Captain *Armstrong*, before you believe that any other man would do that, which you would never venture to do in a similar situation.

Unhappily for the subjects of this country, the law is not the same here as it is in *England*—I know not why:—It is, I think, a great omission at least,—I will not use a stronger phrase, upon the part of the legislature, not to guard the lives of the subjects against the accusation of treason here in the same manner as the law of *England* has guarded the *English* subjects. But unhappily for the subjects here, the law is, that one witness alone is sufficient to convict—But by the law of *England* no man can be convicted of treason, unless two witnesses concur to prove him guilty. This is a great preservative against false, and malicious accusation—the spirit of party—or the heat of the times.

If two witnesses were necessary in this country, I think it would be difficult to find a second to swear as Captain *Armstrong* has sworn—that a perfect stranger to the Prisoner

soner—unknown *to* him and unknown *by* him, should so far depart from all rules of common sense and prudence, as to put his life and fortune into his hands, and expose both to forfeiture, when the contrite or perfidious conscience of the person led him to discover.

If this case were in *Westminster-Hall*, you could not hesitate a moment; the most respectable witness there, standing alone, could not support a conviction.—Why is the difference?—Treason is not more common here than in *England*, and therefore, gentlemen, I tell you, that when you know, that the most guilty subject of *England* could not be convicted of treason upon the oath of the most respectable man the country affords, if he stood alone, you will require here, where one is said to be sufficient, the testimony of a person unimpeachable in all respects, and who must tell you a tale, probable and consistent in all its parts.—The parliament of *England* did not pass this law to encourage treason.—The parliament of *Ireland* have not thought proper to pass such a law:—but a jury will require, that *the witness* to convict shall be such as that no man, however captious, or cavelling he may be, can object, nor the most acute and plausible reasoner find a reasonable ground to attack the propriety, or conscience of the verdict.—If the characteristic of the story be doubtful, improbable, or inconsistent, twelve *Irishmen* will not convict upon such testimony, when by crossing sixty miles of water, the most guilty could not be convicted upon the testimony of the most respectable witness.

Gentlemen, I do not mean to argue against the law, but I regret, that the law is so. I think life ought to be protected here in the same degree, and I put it to the Bench and to you, in whose hands the life of this man now stands, whether it is fit, or decent to take away the life of an individual upon the single testimony of a witness, unless he be of such a character, as that no man can find fault with it, or tell such a story, that no man can hesitate to believe it?

Gentlemen, does this witness appear in such a light to you? I am instructed, we shall call witnesses to shew him to be very different from what the gentlemen concerned for the Crown would wish you to believe.—But as you have not heard this evidence yet, I am more inclined to take the account from himself.—He is introduced without previous consent, or enquiry to the Prisoners. He had,

it seems, asked Captain *Clibborn*, whether he should be introduced or not; and I entreat you to call to your recollection the reason he gave. "For," said he, "as I have been indiscreet in my conversation, I do not know whether it would be prudent to be introduced to this person."—Why did he say, he had been foolish in conversation?—If every man that might be foolish in conversation;—or in other words, if every man who was not wise in conversation was to be struck out of Mr. *Sheares*'s circle of acquaintance, it ought to be very confined indeed.—The folly, he alluded to, must have been some very particular kind of folly.—He was asked, had he always professed a regard for the King, always respected religion and expressed the highest sense of the moral obligation of an oath.—He said he never derided an oath, or natural or revealed religion—that he spoke with respect of the King, and did not recollect any conversation of another tendency, and yet he doubted, whether it would be discreet to be introduced, in consequence of his foolish and indiscreet conversation!—What can you infer, but that he expressed principles upon politics or religion inconsistent with that which he represented to you this day. Was it a common, and ordinary folly.—No, gentlemen, his conscience speaks for him, and he was sensible, that he had expressed principles which might render him liable to censure or disgrace. Do you now believe that he never expressed himself in an irreligious, or improper manner?

If Captain *Armstrong* had been foolish in conversation—Was Mr. *Sheares* a professor.—Did he give lectures.—Was he a great monitor, and could not the Captain be introduced without conceiving a doubt upon its propriety? Did he conceive Mr. *Sheares* to be a foolish man, and that there would be ridiculous conversation between two foolish men?—No, gentlemen, you must be conscious, that he had spoken matter rendering him liable to suspicion, and therefore in this part of the case, he is utterly incredible.

Capt. *Armstrong*, if we believe his own account, continued this correspondence for nine or ten days—he had four or five interviews with Mr. *Sheares*, and in the course of these did actually obtain from him a direction to persons in his own regiment of militia, and a knowledge of the disposition of the persons employed in it.—I do not know how you will be inclined to appreciate the conduct of a man—who gets into the confidence of another for the purpose of acquiring a
knowledge

knowledge of matters he could not otherwise obtain, and making use of that knowledge against the life of the person from whom he obtained it!—And yet, if we believe Captain *Armstrong*, he did this:—I pass no opinion upon such conduct.—I leave that for you.—But this I will say, that if I were a Juryman, I would not be quick to convict upon the evidence of a man, who acknowledged that he became the friend of another, for the purpose of betraying the friendship, and taking away the life of the friend. I shall not pretend to say, how a man ought to act under such circumstances. But I say, that in this country, where only one witness is necessary, that such a man is not that sort of a witness upon whose testimony you would convict any person.

Gentlemen, I know it will be said, that this case does not rest upon verbal testimony, but that there is evidence in the hand-writing of the Prisoner himself, which manifests his design. Gentlemen, that paper, which was produced, was found in an open desk:—it never was published, or sent into the world:—it does not appear, that it ever was intended to be published, or sent into the world. The person, who wrote it, might destroy it the very moment or day after it was found, without making any criminal use of it. It could not be made use of as evidence of an overt act, though it may be read in evidence against the Prisoner. But that paper however violent, or strong, does not in itself import any guilt. If it were published, or delivered for publication, or if steps are taken to bring it into public view, criminality might attach upon it. But a loose paper in a desk, without any evidence to shew its intention, or what use was to be made of it, cannot affect the life of any man.

Suppose the person at one time actually entertained the sentiments contained in it—afterwards changed his opinion, and before any discovery was made, destroyed it:—would the circumstance of having once in his life written such sentiments be evidence to affect his life. If the paper had not been discovered by Alderman *Alexander*, it could not appear, or if it had been destroyed in consequence of a change of opinion, it could not be evidence against him, and therefore not having been published, nor intended to be published, it should not affect him at all.

In *Great Britain* it could not affect him; for if only one witness were produced, this paper would not supply the deficiency

deficiency of the second witness; and though the Jury actually *thought* him guilty, yet they could not convict him: it would not amount to evidence in point of law to convict him, and therefore I entreat you to consider, whether a piece of evidence which could not affect a man in *Great Britain*, shall supply a want of evidence, and amount to a conviction against him.

The language of that paper I do admit is culpable in the extreme; it contains sentiments, which if my instructions are right, never were the sentiments of the Prisoner. I am instructed the most respectable witnesses will appear to shew, that there is no man, who for his general conduct and character could less be supposed to entertain such sentiments than him—and a cloud of witnesses will appear to shew, that so far from being a sanguinary man, his whole life has been amiable and benevolent. A witness for the Crown, who knew the Prisoner, said he never knew a man of more integrity—that character will be confirmed by many others; and if you hear it from many reputable intelligent people, unquestionable for veracity and credit, will you make that instrument found in an open drawer, without evidence to shew any intention of acting upon it, proof sufficient to take away the life of the Prisoner.

Gentlemen, you are not to couple the circumstances of this country with the conduct of the Prisoner. You are not to say, that because a rebellion rages in the country, that therefore the Prisoner is guilty; or that because the law may demand its victims from those who have outraged and disgraced it, that therefore the Prisoner shall be one of them. You are not to make any inference, that because he was a member of this Society or the other, that therefore he committed high treason. You can conscientiously convict the Prisoner only upon the evidence, which shall in your opinion substantiate the two charges in the indictment against him. You must be convinced, that he compassed and imagined the death of the King, and adhered to his enemies. The former was impossible in this country, and the second is without evidence to support it.

The time of the trial is unpropitious to the Prisoner. You must share in the common feelings of the country; and it is not possible, but that as men you must come into that box, with prejudice upon your minds. You come, I am sure, with as little as any other men:—but some of you must entertain prejudice against the Prisoner.—If the crime
be

be great, the punishment is not small, for his life is forfeited to the law. Such are the feelings of the people of this town, that no indulgence can be shewn to a man convicted of treason. If 12 men find a verdict for treason, no man will complain of it—and yet it may happen as before.—The history of past times shews that men have fallen victims to state prosecutions, and the voice of posterity has condemned the sentence. Many instances there are of men dying for treason, where succeeding ages have known them to be perfectly innocent, and their death was not attributable to the malice of the Jury—but was the necessary consequence of human passions operated upon by predominating evidence. The Juries, who tried *Sidney and Russell*, and others of less note, thought themselves right in the conviction. But time has shewn a contrary opinion, and men, whose minds were not operated upon by the passions then prevailing have shewn, that these verdicts instead of being the verdicts of law and the fact, were the consequence of prejudice and passion. Some things which have happened to honest men, may happen again. It is with great humility and respect I say, you may feel some sort of prejudice at these times: prejudices have prevailed among other men, under similar circumstances. You may think you do right in finding a verdict of conviction, but satisfaction may not attend your dying beds. When the struggle of the present moment is gone by, it may be some consolation to be able to take a calm review of the proceedings of this night.

Gentlemen, I know not the opinion of Captain *Armstrong*, but for my part, it is my opinion, that there is a God, and a future state of rewards and punishments.—That also is your opinion, and I cannot conceive a situation more satisfactory to a man having those opinions, than if he can upon his dying moment reflect, that as a Juror, no inhuman prejudice prevailed upon or influenced his mind in the discharge of his office; he will reflect, when he is rendering up his own life to him to whom he is accountable for all his actions, that when called upon to sit in judgment upon the life of a fellow creature, the judgment was not pronounced in heat, prejudice or passion. Take care, that your verdict satisfies you now, that hereafter during every moment of your lives, as long as recollection lasts, you may still be satisfied with the justice of the sentence, and not tortured with the painful recollection, that
though

though once you thought yourselves right, yet you did wrongfully deprive a fellow creature of his life. These are the considerations which I would press upon your minds—I have the honour of knowing many of you, and you are men of known integrity, and more honest men could not pass upon my life. I warn you only against the frailties of our frame, which the best and the wisest among us are not exempt from:—I leave my client's life in your hands, and to your justice I commit him.

Mr. PLUNKET. *My Lords, and Gentlemen of the Jury.* As Counsel for Mr. *Henry Sheares*, I shall make a few observations upon the points of law, which have been already alluded to; and gentlemen, I have the satisfaction of thinking, that if I mistake, I shall be corrected by the superintending mind of the Court.

Gentlemen, the law of treason in this country rests upon the st. 25. *Edw. 3.* by which three particular species of treason are pointed out. The 1st is, compassing and imagining the death of the King; the 2d, adhering to the King's enemies; and the 3d, levying war against the King. With regard to the 3d of these, there is no specific count in the indictment against the Prisoner, as a substantive offence; and therefore, gentlemen, you are to confine your attention to the two first.

I shall take the liberty of stating some of the acknowledged principles of law prevailing since the enactment of that statute down to this day, from which it will appear, that no part of the charge is sustained by legal evidence.

Compassing the King's death is totally distinct from the other species in this respect, that the law does not wait for the perpetration of the wicked intent, or expect its being carried into effect, because by an anomaly distinguishing this crime from every other, the *intention* is made equivalent to the *act* in others. I do not mean to say, that the law is not properly framed, because the public weal is wrapped up in the person of the Monarch, and that public weal requires, that an intention against his life should be considered as equal to the perpetration of the crime. But in the other species of treason, it is totally different; because neither a conspiracy to levy war, nor a conspiracy to adhere to the King's enemies, will amount to treason under the two other branches of the statute. Such a conspiracy may be an offence in itself—it may be a high misdemeanor; but

but treason it is not, because it is not so provided for by the stat. In *England* this was felt to be a grievance—this was acknowledged as a fault and a defect, because cases might arise in which atrocious conspiracies against Government, and designs to overthrow the Government by force might exist, and yet by the vigilance of Government, or of Providence be defeated, and not for want of criminality in the inventors; therefore, an attempt was made to supply by *interpretation* that defect, and to make such acts criminal within the words of the statute, though they had not been so intended by the legislature, and therefore a mode was devised by which conspiracies to levy war or to adhere to the King's enemies was made tantamount to treason; not by adjudging them to be a substantive offence, but by saying, that they may be laid as overt acts of compassing the King's death, and that though the party accused had no intention *directly* to take away the life of the King, yet by doing acts that by remote consequence might have that tendency, he should be deemed guilty of the crime.

It may be necessary to state the caution with which this excess beyond the words of the stat. was adopted in *Great Britain*, for it was found to be a departure from the letter of the stat. which meant to put treason upon a clear foundation. It had been the curse of the country, that treasons were uncertain, and subjects had been entrapped in the vagueness of the charge. This stat. was intended, *for ever*, to put the matter upon a clear footing—However, beyond that intention, these adjudications were adopted, saying, that though the party had not *immediately* conspired the death of the King, yet other acts, involving that event, however remotely, should be considered as overt acts of treason. But, gentlemen, see, whether that which has been adopted in *England* can be so here, without overturning the stat. itself. It is not decided, that *every* conspiracy to levy war, or to adhere to the King's enemies can be laid as overt acts, but they are allowed with the most severe restriction and salutary regulation. I hold in my hand the work of one of the ablest men that has written upon criminal jurisprudence. Mr. *Justice FOSTER* in his discourse upon treason, *ch. 2. s. 4.* says, "insurrections in order to throw down *all* inclosures, to alter the established law, &c. are, in the construction of law, high treason within the clause of levying war."—And in the 5th
section

section he enumerates a variety of acts which might be done, and which if carried into effect would be treason, but do not come within either branch of the stat. because not having in contemplation any thing necessarily leading to endanger the King's safety. But in the 6th section he says, " a bare *conspiracy* for effecting a rising for the purposes mentioned in the two preceding sections is not an overt act of compassing the King's death, nor will it come under any species of treason within the 25 *Ed.* 3."

How do I apply this doctrine?—The first count, to which I at present apply my argument is for compassing the King's death; the overt acts are various, as tending to stir up insurrection, &c. charging the seas marks of the intention to take away the life of the King. From the author I have cited, it appears, that such conspiracies are not treason by the law of *England*, but even if they were, I hold the law of *England* and *Ireland* to be substantially different in this respect. — A man in *England* conspires there to deprive the King of the Crown; that may be charged as an overt act;—why? because it is an act, which cannot be done without involving the personal safety of the King; that is held to be a compassing of his death, because the interval between the prison and the graves of Kings is nothing. According to the course of human events, the Monarch deprived of his liberty and reduced to the state of a subject cannot survive his deposition, and therefore such an act is an overt act of compassing his death. But it is not a technical refined idea;—it is not considered as a conspiracy merely against his public capacity, depriving him of his sovereign functions, but it is the crime of intending to deprive him of his natural life: and therefore every thing tending to deprive him of liberty is criminal, because his life cannot be safe without it—because death follows the imprisonment—and therefore the accused is deemed criminal, not for an injury done to the corporate right as Sovereign, but to the natural capacity and person of the individual.

Apply that to the case here, and I ask you, whether upon your oaths, if you believe the evidence to the extent in which it has been given, and that the Prisoner embarked in the conspiracy stated, that could *probably* involve the destruction of the King in his natural capacity? It might be argued with the same force and the same justice, that when *America* was part of the King's realms, a conspiracy there

there to take away the life of the King would be an overt act of compassing his death. I say, you establish a new precedent, out-leaping the boundaries which have been limited to this law in *England*—I say, that the law of *England* is different from the law of *Ireland* in many respects, when the fact is, that it is so—Upon this very subject, it is materially different—There the Prisoner is entitled to have a copy of the panel of the jury and his indictment, and a list of the witnesses a certain number of days before trial—Two witnesses are necessary to overt acts of the same treason. As to the first, he is not so entitled here:—As to the second, there is a doubt thrown upon the subject—but if there be a distinction in one instance against the Prisoner, it is not unjust to say, that in another there should be a distinction in his favour.

I say, therefore, with submission to the Court, that unless you are satisfied, that the Prisoner did harbour the intention of taking away the life of the Monarch, of which there is no evidence, or did some act leading to that, you are bound to say, there is nothing upon the first count to convict him.

It may appear extraordinary, but so the fact is; there is no count in this indictment for levying war. The second count is for adhering to the King's enemies.—Their Lordships will tell you, gentlemen, that the words "enemies of the King" cannot be satisfied by any description of *subjects*, although the worst enemies which the King can have must be rebellious subjects. But a foreign power at war with the King is what is meant by the statute. I admit, that as to the existence of the war, precise evidence is not required; public notoriety is sufficient. But this I say, that to implicate a party in the guilt, it is not sufficient to shew, that a war is existing, but there must be some communication between the party accused and the foreign state—some co-operation, concert, or understanding between them. I say also, that the mere fact of levying war against the Monarch, at the time he is at war with a foreign enemy, does not amount to an adherence to that enemy: There must be proof of entering into a conspiracy with him—Now, where is the evidence here of such a conspiracy, or understanding between the Prisoner and the Powers of France? If the Prisoner entered into such a conspiracy, where is the evidence, that he did so for the purpose of forwarding the schemes of the
Q enemy?

enemy? That is disproved by the evidence in the cause. What is the evidence of the solitary witness upon which this bill of treasons rests for its support? He states, that they spoke of the readiness of the country to rise—he introduces the name of the *French*, it is true—but with what view was it introduced? They said they would not wait for the *French* “We are to carry on war *without* them”—That may be evidence of a conspiracy to levy war; but it is not an adherence to the King’s enemies. Then the question is not—“Is the Prisoner an *innocent* man?”—though, I trust, it will appear he is—but the question is “Has he committed the crime of which he is indicted?” Not, whether he has entered into a conspiracy, but whether the crime *alleged* against him, has been substantiated by evidence? A man can be prepared to resist that crime only which is alleged against him—Proof of any other crime must be disregarded by you upon this occasion, and therefore, I submit upon this part of the case, that the offence in the second count is not proved—not a colour or complexion for saying, that the Prisoner adhered to the King’s enemies. You are not to take up matters from the conjectures of your own mind, but from evidence, and what evidence have you here of any intention on the part of the *French* to invade this country? Or that the Prisoners conspired to assist *them*? We are at war with the *Spaniards* and also with the *Dutch*, and you might as well infer, that the Prisoners conspired with them against the King. I say, therefore, there is not a shadow of evidence of any counsel, assistance, or communication, so that the second kind of treason is out of your consideration.

Therefore, gentlemen, it comes back to the original ground, whether the conspiracy to levy war can be laid as an overt act of conspiring the King’s death?—I have troubled you too much with what I conceive to be the law:—if I have been wrong, I shall be set right by the Court.

A very few observations remain in point of fact. What I have hitherto said, applies to *both* the Prisoners, so far as respects the *law* of the case. But with regard to the *facts*, I must trouble you, upon the case of Mr. *Henry Sheares*, much less indeed than I would otherwise do, if I was not to be followed by a very able advocate, who will speak to the evidence.

With regard to Mr. *Henry Sheares*, the evidence against him rests upon the testimony of Captain *Armstrong* alone.

As

As to the law stated by Mr. *Ponsonby*, of two witnesses being necessary, I will not give any positive opinion upon it.—I do not pretend to say, whether the statute in *England*, enacted a new law, or only declared the old. There are great authorities, who say it is only a declaratory statute—among others, *Lord COKE* says, two witnesses were necessary by the common law.—If he be right, we are entitled to the benefit of the common law and will claim it.—But I throw that out of the case—not concluded indeed, but supposing, that in point of law, the testimony of one witness is sufficient to convict, I beg leave to observe upon the nature of that testimony.—What the kind of story it is which fell from the lips of the witness—how far it is natural or probable, or entitled to credit, merits your consideration, when compared with your observance upon life and manners.—That so rash and indiscreet a confidence should be reposed in this stripling, without any previous acquaintance of himself, his life, or manners—without any pledge of secrecy—but rashly and suddenly, as if he had fallen in love with him upon first interview—is matter for your conjecture.—How far it was an honourable ministry, is for your judgment. In the case of a common informer, his evidence is weighed with caution—every circumstance throwing a doubt upon it is to be attended to—if the testimony exceeds the common rules of life and course of experience, the jury are cautious in admitting it.—But this is not the case of a *common* informer—it is not the case of an accomplice, who repents of his crime;—that might be the fate of an honourable mind.—A man may be involved in the guilt of conspiring or treason, and retrieve himself nobly by making an atonement to his country and his God, by a fair and full confession of the crime.—But that is not the case here. This is the case of a man going for the purpose of creating and producing guilt, that he might make discovery of it. Does it not appear, that the conception of the guilt was entertained in the mind, if not fomented by the witness.—You are to consider the different motives and movements of the human heart, and how wavering dispositions may be taken advantage of, and urged on by dexterous persuasion to a conduct which the seduced abhorred. You are not now trying whether the Prisoner be a man of strong frame—of firm nerves and mind, capable of resisting allurements of guilt and temptation to vice.—But you are to try, whether the
evidence

evidence has satisfied you, that he has been guilty of treason. Suppose now the evidence to be true—would it not shake the mind of an ordinary man, not of the most strong and firm disposition, if he saw an officer of the Camp making declarations hostile to Government—making a sacrifice of his situation, saying, “I will betray the Camp which I am appointed to guard”—if he goes and persecutes another with his *volunteering* treason, fastens upon him in the streets, follows him abroad, and haunts him at his house, I say, are you surprized at seeing the other listen for a moment to the temptation, when he perceived that the man whose more immediate duty it was to resist the treason, had adopted it?—I say this, supposing for a moment, that the evidence is true—I will shew you presently it is not.—Was it the part of an honest man to seek repeated interviews—to follow the other to his house and into the bosom of his family, until at last he lodged him in a gaol?—Did he know the Prisoners before?—was he acquainted with their lives and characters?—No, but seized with a sudden zeal of turning informer against them, he insinuates himself into their acquaintance. I can conceive the zeal of an honest mind in the moment of mistaken enthusiasm to be led into an act of vice to save his country.—I can conceive an exertion of *Roman* virtue flinging morals into the gulph as a sacrifice to patriotism.—But what a life must there have been to claim praise for that act of enthusiastic ardour?—there must have been a life of religious feelings, of continued virtue, and disinterested, honourable views.—In such a case you can by exerting your imagination, account for an act of perfidy to save the country. But does this witness stand in that point of view? No, gentlemen, by his own confession he is convicted, and we shall shew by a cloud of witnesses whose characters are above imputation, that he does not believe in the existence of a God, or a future state of rewards and punishments—that he is a notorious republican, and devoid of the principles of loyalty. But see his own account.—Was he a man of decided loyalty—attached to his King and country? No; he confessed he had been in the habit of reading *Paine’s* pamphlets—his *Rights of Man* and his “*Age of Reason*”—his creed was founded upon these, and he drinks *republicanism* as a toast—and this man, the companion of *Byrne*, and who had been foolishly democratic, engages in conference with *Mr. Sheares*, and enters upon the

the new office of informer for the good of his country!—It is surprising that between the violence of republicanism and the the zeal of an informer for the Crown, the mean proportion of virtuous patriotism could not be found! The friend of Mr. *Patrick Byrne*—the drinker of republican toasts, suddenly becomes a spy for the good of his country! You see, gentlemen, the evidence which has been laid before you.—Is there any one fact brought forward, except the naked testimony of this informer, to fasten guilt upon Mr. *Henry Sheares*? He has chosen his time of interview with great discretion—no person has been present at the conversations, but the Prisoners, who cannot give evidence for each other. Has the person who introduced them been brought forward—or the Serjeant of the militia?—They are in the power of the Crown—or did the counsel for the prosecution conceive this witness to be so immaculate, that he could not be impeached, and not necessary to be supported? Why not produce *Cannors*?—He is in the *Bar-rack*.—Why not produce *Byrne*? He is in prison. Why not produce *Fannan*? Why not produce any one to give steadiness to the tottering evidence of this man?

Gentlemen, as to the proclamation which has been commented upon, it is not in the hand-writing of the Prisoner Mr. *Henry Sheares*.—It was not in his possession—he knew nothing of it—he had an opportunity of destroying it, if he chose, or knew of it.—Whatever the effect of it may be, as applying to the other Prisoner, I meddle not with it—But I do not think it affects the other, and most certainly, gentlemen, the Court will tell you, that this evidence is not to weigh a feather upon your minds in determining the case of one man, to whom it does not apply, although it may be thought to have some relation to another. It is an unpublished, blotted, and unfinished paper. The mere circumstance of that blotted paper being found in the house of Mr. *Henry Sheares*, where Mr. *John Sheares* resorted—not received by Mr. *Henry Sheares*, not acknowledged by him, on the contrary from the evidence you must infer he knew nothing about it—cannot weigh with you, nor affect his life.—Is it proved that Mr. *Henry Sheares* did any act—corrupted any man, or frequented any society, or took any political step, beyond the mere colouring which Captain *Armstrong* gives to the conversation between them? And how is that, with regard to Mr. *Henry Sheares*? Did he appear eager to gain proselytes?—At the first interview,
Mr.

Mr. *Henry Sheares* declined to say any thing—he departed, and did not return that day. Did that shew an eagerness to gain a profelyte? He deserted Captain *Armstrong*, is hunted and persecuted by him—he infests the society of his wife and children—still no *act* is done—it rests in *conversation*—not a single *act* done—no men corrupted—no societies frequented, arms taken up, or furnished to others—no *act* countenancing rebellion, or hostility to the Crown.

Gentlemen, we will prove by a crowd of witnesses, that this gentleman Mr. *Henry Sheares* has been unconnected with and unconcerned in politics—devoted to pursuits of a different nature—to literature—to science—an attention to private affairs—enjoying the society of an amiable wife and children, beyond whose company he sought no pleasure. You certainly are not to be influenced by humanity—But your verdict must be founded in justice and in truth—You cannot suppose, that a man in possession of every comfort and enjoyment, with a wife and six children, would voluntarily engage in treason—would rashly confide his life, his fortune and his family to this stripling of an informer, whom he never before beheld.

Gentlemen, I have troubled you too long. I now conclude, and with a firm hope, I trust my client to your hands.

[It being now nine o'clock, by consent of the Prisoners, the Court ordered some refreshment for the Jury, but they did not leave the box, nor did the Court adjourn.]

CHARLES ROBERT SHERVINGTON, Esq. Sworn.

Q. What regiment are you in?

A. Lieutenant in the 41st regiment.

Q. Do you know Captain *Armstrong* of the King's County Militia?

A. I do, Sir.

Q. Have you known him long?

A. I have known him since his childhood, he is my nephew by marriage.

Q. You have some degree of intimacy and acquaintance with him?

A. I have: he has been at my house from school very often.

Q. You

Q. You have had frequent conversations with him ?

A. I have had frequent conversations with him in a general way.

Q. You have had general conversations with him upon a variety of subjects ?

A. Living together, I must have had a variety of conversations with him.

Q. Have you ever heard a conversation by him, with regard to his Majesty ?

A. Yes, I have.

Q. Have the goodness to mention what that conversation was ?

A. Upon that subject, as a military man, I did not converse with him much.

Q. Why ?

A. I did not think his principles exactly such as a military man should be.

Q. Upon what occasion, or where had you the conversation ?

A. I have at different times had conversation with him, when in Lord *Cork's* regiment in *England*.

Q. You were going to mention one particular conversation, where was it ?

A. At Mr. *Mulholland's*, an agent of his.

Q. How long since ?

A. I apprehend two or three years ago ; I cannot exactly say to the time.

Q. Mention what the particulars of the conversation were ?

A. It is very hard to recollect the particulars of a conversation so long ago over a bottle of wine.

Q. Mention them as well as you know ?

A. I remember that he was not loyal, because I told him, that any man, who wore his Majesty's cloth, and received his pay, should not talk in that way.

Q. What was the subject of the conversation ?

A. We talked of various things—the *French* revolution—the army and such things as men talk of upon those occasions. He said he did not wish *Kingly Government*.

Q. Endeavour to recollect, whether he used any particular expressions with regard to his Majesty ?

A. He did.

Q. Mention what they were ?

A. He said that if there was not another executioner in
the

the kingdom for *George III.* but himself, he would be one, and pique himself upon being so—I told him he was a damned fellow, and ought to give up his commission, and leave the army and go over to *France.*

Q. You mentioned, that he was your nephew?

A. If he was not, I should have knocked him down.—I do not know the Mr. *Sheares's*, and never saw them until this day.

Q. You were at this time in the army?

A. I was; I think, I had just got into the regiment—it is two years and a half ago.

Q. Have you ever at any other time had conversation with Captain *Armstrong*?

A. I always declined conversations of that kind with him, it being disagreeable to quarrel with so near a relation; and I stopped him, saying—"For God's sake, if these are your principles, keep them to yourself."

Q. Do you recollect his using any expression respecting *Paine* or other writers?

A. I know he read his works, for I saw them in his room.

Q. Did he give you any of them to read?

A. I recollect at a Bookfeller's in *Grafton-street*, I do not remember the number, I met him very often there, he was in a delicate state of health—he handed me a book—he had a newspaper in his hand—and he handed the book to me, saying, "read this, it is my creed." I found it was *Paine's Rights of Man*:—I thrust it into the fire, and said he should be served so. His Aunt called upon me a few minutes after, and I went away and told her, what a shocking thing it was, that he kept such bad company, and it was a pity he got into the *Somerset Militia.*

Q. If Captain *Armstrong* were to swear, that he never had declared, that *Paine's Rights of Man* were his creed, would he swear truth?

A. I did not hear him swear it, because I was ordered to leave Court.

Q. Did you ever hear him make any declaration as to the regiment he belonged to?

A. I have. Do you mean the *King's County Militia*?

Q. Yes—of that regiment?

A. Never; I never heard him make any declaration respecting that regiment. I have not known him lately, for I have been upon the recruiting service, and have been absent upon

upon the business of purchasing into a regiment of Dragoons.

Q. You had some conversation about the *King's County Militia*?

A. I was asked, did I know who was the Captain *Armstrong* who was to prosecute the *Sheares's*:—I said I knew but two—one was my brother-in-law—the other *John Armstrong* my nephew—I said I would enquire about it—I went to Counsellor *Barrington's*, who was from home—I then went to his mother's, who told me that *John Armstrong* was to prosecute the *Sheares's*. I met Captain *Clibborn*, and told him I was sorry to find, that *John Armstrong* was finding out the secrets of men, in order to discover them. He told me, it was a different thing, that the *Sheares's* wanted to seduce him from his allegiance.—“Damn him,” said I, “he should have run them through the body.”

Q. Did he ever talk to you about the *King's County Militia*?

A. No.

Q. About any other regiment?

A. Yes, about the *Somerset Militia*; he mentioned that some of them were disaffected—some not.

Q. Was any person present, when he made use of the expression of being the executioner of the King?

A. Mr. *Mulholland* went up stairs, I went after him, and went to the drawing-room to Mrs. *Mulholland*:—the conversation was told to her, when we both went up.

Cross-examined.

Q. Are you of this country, or of the neighbouring one?

A. I was born in the *King's County*. I am a magistrate of that county I believe since 1786.

Q. Were you ever a Magistrate in any other place?

A. Never.

Q. You have been always a resident of the *King's County*?

A. My estate lies in *Kilkenny*—I have 200 acres there under the Duke of *Ormonde*, but I have been principally with my regiment.

R

Q. Are

Q. Are you sure that you never were a Justice of Peace prior to 1786?

A. Perfectly.

Q. Have you been uniformly a Magistrate since 1786?

A. It may be 1787.

Q. Were you ever discontinued?

A. I was.

Q. How?

A. Just for two or three days.

Q. For what reason?

A. Without any reason.

Q. At what period?

A. I cannot tell.

Q. Can't you give an account of it?

A. I cannot.

Q. Try and recollect?

A. Indeed I cannot.

Q. It is a remarkable event for a gentleman of high feelings?

A. I hope I have the feelings of a gentleman and an honest man.

Q. You cannot recollect the interval of time you ceased to be a Magistrate?

A. I cannot.

Q. You might have been three or four years without being a Magistrate?

A. No, I was not:—I was a very few days, I cannot tell the time, a post or two.

Q. You said you kindly came forward upon hearing that Capt. *Armstrong* was to be a witness against the *Sheares's*?

A. No, Sir, I was summoned: I would not have appeared for 100 guineas.

Q. Where were you when you were summoned?

A. At Mr. *Alsop's* in *Essex-street*.

Q. In *Dublin*?

A. Yes.

Q. You did not hear of *Armstrong's* appearing till you came to *Dublin*—you said you went to Mr. *Barrington's*?

A. I did:—I did not find him at home—I went to his mother's and saw his sister, Mrs. *Stephens*, who told me with regret that *John-Warneford Armstrong* was to appear.

Q. In consequence of that, you did what?

A. In consequence of that I did nothing.

Q. How

Q. How came you to appear ?

A. I was told that Captain *Armstrong* was to appear to prosecute the *Sheares's* for treason.

Q. Who told you ?

A. My brother-in-law.

Q. Who is he ?

A. Mr. *Alsop*.

Q. Then you went to Counsellor *Barrington's* ?

A. No: I saw him.

Q. You went to his mother's ?

A. I went to visit Mrs. *Stephens*—I saw her in town, and wished to enquire for her.

Q. You went to Mr. *Barrington's* ?

A. No: I went to see him, but not upon this business.

Q. I wish to understand you, Sir ?

A. It is very easy to understand me.

Q. How long have you been acquainted with the *Armstrong* family ?

A. That I cannot tell—10, 15, or 20 years.

Q. Have you seen Mr. *Barrington* upon this business ?

A. No, I have not.

Q. You have seen this Mr. *Armstrong* very often ?

A. Since he was in petticoats.

Q. Have you any suits going forward between your family and his ?

A. No.

Q. In your own family ?

A. Yes.

Q. With your mother ?

A. Yes.

Q. Have you lived in great intimacy with the *Armstrong* family ?

A. Yes.

Q. How long an interval has passed within these five or six years without his speaking to you ? Was there any ?

A. There was.

Q. What interval ?

A. I cannot tell.

Q. I suppose in two or three years after his declining to speak to you, you went to look for him ?

A. No, Sir, I met him at Mr. *Mulholland's*—I'll mention the cause of the quarrel if you please—he wished to preside at an assembly at *Ballycumber* ; I took out a lady to lead

lead up the dance, while he was out of the room, and his mother was displeased, and there was a sort of quarrel.

Q. No more quarrel than that?

A. He would not speak to me, and I would not speak to him—I considered him a boy: he was afterwards much out of the country.

Q. You were a man and he was a boy, and you had too much good sense to keep up the quarrel with him?

A. No:—He spoke to Mr. *Mulholland*, said he was anxious to be on terms with me; it was mentioned to me—I said I had no objection; he asked me, what he was to call me, *Uncle* or *Mr.* I said what he pleased, and shook hands with him.

Q. *Mulholland* is dead?

A. He is.

Q. Then there is no other person to mention the conversation about the executioner?

A. His wife is living.

Q. She was not present?

A. No, but the conversation was told to her.

Q. Where did you see Captain *Armstrong* last?

A. I saw him here to-day.

Q. Where before that?

A. I do not recollect.

Q. Did you see him in the *King's County*?

A. I believe I did.

Q. At several gentlemen's houses?

A. No: the last place was at Captain *Clarke's* at *Twickenham*.

Q. Is he a gentleman, and a man of honour?

A. I am sure he is.

Q. Was Captain *Armstrong* a visitant there, or was it an accidental meeting?

A. It is the *Armstrong* estate. Captain *Armstrong* asked the house from Captain *Clarke*, and invited gentlemen to dine there.

Q. Then you dined there upon *Armstrong's* invitation?

A. Yes.

Q. Are you of the *King's County*?

A. Yes, I am.

Q. Would any man from the *King's County* keep company with him, if they heard him speak as you have mentioned?

A. He is a man of honour from his situation, and from his family entitled to good company.

Q. Tell

Q. Tell me any man of honour in that county to whom he expressed the sentiments you have mentioned ?

A. He kept very little company in that county.

Q. Mention any man by name to whom he expressed those principles ?

A. Mr. *Mulholland*, who was his agent, carrying on suits for him with some of the family.

Q. Is that the man who is dead ?

A. Yes.

Q. Mention any man, who is living ?

A. Mr. *Eccles*.

Q. He is dead also ?

A. Yes, I could not keep him alive (*Here, there was a laugh, upon which the witness said*) you may laugh—I am as good a subject as you are, and as honourable.

Q. Mention any man of honour now living, in whose company you heard these expressions attributed to Captain *Armstrong* ?

A. I have dined very often with Captain *Clarke* in his company ; he very seldom kept company there—he was a very young man, and only came over to attend his law suits.

Q. How near did you live to *Ballycumber* ?

A. Within a quarter of a mile.

Q. Did you know *Connors*, the serjeant of the *King's County Militia* ?

A. No.

Q. Have you attended the Assizes of the *King's County* ?

A. I have very often, when you (THE ATTORNEY GENERAL) and Mr. *Baron Smith* were there.

Q. How long is *Mulholland* dead ?

A. Two or three years :—I cannot say—I did not know I should be asked these questions.

Q. Whom did you converse with upon the subject of these trials ?

A. I conversed with several ; I talked to Captain *Mellifont*, and said it was hard to be summoned as a witness against the Crown, being an officer.—I went to Colonel *Campbell*, and I was told, I might be given up and sent into gaol, and fined 300*l.* or 1000*l.*

Q. With

Q. With whom did you converse upon the subject of your evidence?

A. I spoke to many, that I was sorry to be obliged to appear:—that I did not know the *Sheares's*.

Q. To whom did you tell that?

A. I do not know—he is a Captain.

Q. What did you tell him?

A. That I was sorry to appear against the Crown.

Q. How did the agent concerned for the Prisoner know the evidence you could give?

A. I know not that.

Q. You did not communicate the substance of what you were to give in evidence before this day?

A. I told Captain *Mellifont* that I was sorry to appear, and would be glad to escape it.

Q. I shall not press you more upon that, Sir.—How long were you upon such terms as not to speak with your wife's relatives?

A. Except at the time of the election: I took a strong part with Mr. *Daly*, my near friend—and my friends were strongly attached to Lord *Tullamore*.

Q. Was that the only occasion of not holding terms of intimacy with them?

A. The only occasion.

Q. How long did that continue?

A. A month or two.

Q. Perhaps more?

A. I cannot say: it continued for some months.—The election was over in *June*.—Captain *Armstrong's* servant got very riotous, and I was sitting with a friend of Mr. *Daly's* at the town where I live.

Q. Who was present, when you called upon Captain *Armstrong* to know if he was not to give evidence against the *Sheares's*?

A. Captain *Clibborn*.

Q. Did you sit long with him?

A. I did not sit four minutes, nor see him since—he has been out of town.

Q. Was this the mode of your asking—^a Are you to “appear against the *Sheares's*?”

A. No, I said—“What is this you have to say against the *Sheares's*.”

Q. With

Q. With a note of admiration?

A. No, not with any note of admiration—I did not care about the *Sheares's*.

Q. Did you not ask Captain *Armstrong* at that time—
“What, Sir, did you not get yourself introduced to the
“*Sheares's*, for the purpose of giving evidence against
“them?”

A. No, Sir: Captain *Clibborn* told me he was to appear against them—I asked him what it was—he told me the *Sheares's* had been attacking *Armstrong* to bring him over from his allegiance.

Q. What did you say?

A. I said he ought to have run them through the body.

Q. Had you an opportunity of enquiring into the matter?

A. I was not much in town since.

Q. Did not Captain *Clibborn* tell you repeatedly, that Captain *Armstrong* had been giving this account to him?

A. He did.

Q. And the moment he told you that, away you went?

A. I went to my lodging.

Q. You did not visit him since?

A. He was not in town.

Q. He was in *Grafton-street*?

A. He was not there at that time.

Q. Have you not heard repeatedly that Captain *Armstrong* was in *Dublin*, and had been wounded in the unfortunate affair of Colonel *Walpole*?

A. He was wounded at that time, and when I saw him first he was confined, and I am astonished he was able to move so soon.

Q. You never went to see him?

A. I heard he was at *Bray*.

Q. Did you ever enquire for him since?

A. I have not been at that side of the town—I have been engaged with one army agent, or another.

Q. You have been anxious for his health?

A. I have.

Q. Would you be anxious for the health of a man, who had expressed a desire to kill the King?

A. I considered him a giddy young man, led away by bad company.

THOMAS

THOMAS DROUGHT, Esq. *Sworn.*

Q. Do you know Captain *John-Warneford Armstrong*?

A. I know Captain *John-Warneford Armstrong*.

Q. Have you known him long?

A. From his infancy.

Q. In what county do you reside?

A. In the *King's County* for some years past.

Q. Is it your place of birth?

A. No, Sir; I was born in the *Queen's County*.

Q. Have you been intimate with Captain *Armstrong*?

A. Very much so, while he was in *Ireland*, and while I was here, for I lived in *England* several years myself.

Q. Do you recollect to have heard him express any particular opinion, that he entertained with respect to the existence of God, or a future existence of the soul?

A. I have frequently heard him utter atheistical opinions.

Q. What opinions do you call atheistical?

A. A disbelief of a supreme intelligent being.

Q. Have you heard him express any opinion of the existence of the soul of man?

A. I have:—perfect annihilation.

Q. After what you have mentioned, it may be called an *Irish* question; but can you mention what his notion was of rewards and punishments—of the state of the soul after annihilation?

A. I do not know, but he said it was eternal sleep—non-existence.

Q. Have you heard him express these kind of opinions with apparent seriousness and deliberation?

A. As if they were his real sentiments, I have heard him mention them at breakfast.

Q. Did it seem, or did he utter them as a kind of idle rant, as if he thought it an idle thing, or did he utter them as his proper sentiments?

A. With his usual calmness—not with more levity than usual.

Q. Do you mean to say, that this happened more than once?

A. It happened generally when I had an opportunity of talking with him upon that subject.

Q. Do

Q. Do you recollect having passed by his lodging in *Grafton-street*, since the unfortunate expedition of Colonel *Walpole*?

A. I do recollect to have passed from *Stephen's-green* to *Grafton-street* about five o'clock in the evening of *Friday* the 29th of *June*—he was ridiculing the idea of *Papists* fasting upon that day—that makes me remember it was *Friday*.

Q. How came you to his lodging?

A. I heard a person call out, "Holloa"—I saw a person beckon at the window. I knocked at the door, and was received by him up stairs.

Q. What conversation ensued?

A. The conversation principally concerned the engagement, and the wound he had received:—We had some discourse respecting the number of people killed upon each side.

Q. Do you recollect any thing respecting two or three peasants?

A. Yes: After talking of the number of people killed, I enquired as to those killed on the other side, whether they were all killed in the field and with arms in their hands? He said, there were two or three caught at a distance—that one was hanged, in consequence of having refused to give information; another, I believe, was suspended, and Captain *Armstrong* said, he cut him down—but one was hanged outright, and we both agreed, that it was not a good way to make him confess; and that upon his suggestion, the fellow that was suspended, or had the rope about his neck, I am not sure which, was ordered to receive twenty-five lashes, and when he received eight, he called out with vociferation, that he would give information, that he then led them on and said the person who was hanged could have given the same information, though he suffered himself to be hanged—I asked him, how he could possibly reconcile it to himself to deprive those wretches of life, without even the form of trial? He acknowledged, that they did so; I asked him, whether he expected any punishment for it, and though he did not expect it from government, yet, that there was an All-powerful Being, who would punish him—He said, "You know my opinion long ago upon this subject."

Q. In what way did he make that answer—was it with the tone or expression of contrition?

A. It was by no means a serious expression.

Q. You pursued the conversation no further?

A. I took my leave of him rather abruptly.

Q. Do you recollect conversing with him about his leaving the *Somerset* Militia?

A. I recollect his conversing upon it three or four years ago.

Q. If you remember the time more exactly, mention it?

A. I do not.

Q. Did he mention any reason for it?

A. Yes, his having entertained democratical principles:—He mentioned, that there were two parties in the regiment—he mentioned some names—I knew some of them, being a visitor in that county to my relations.—He mentioned Lord *Cork* as one and a Baronet.

Q. You mean, that they were a loyal party and that the others were of a democratic party?

A. Yes:—He said, he had left the regiment in consequence of his democratic principles—He told me so—and my brother told me the same last Summer.

(This was objected to as not being legal evidence, upon which the witness said, he did not mean to offer it as evidence.)

Cross-examined.

Q. Does Capt. *Armstrong* know you perfectly well?

A. I think he does:—Not as well as I know him, because I am older than he is.

Q. But he has a good notion of your character?

A. As good as other people in that county have.

Q. How long have you lived there?

A. Since 1783. I was a magistrate of that county in that year.

Q. You have been a magistrate of that county?

A. I have.

Q. But are not now?

A. No; I was advised to resign, but would not.

Q. You did not think it good advice?

A. No; I was indifferent about it.

Q. You

Q. You were superseded?

A. I was.

Q. Did you ever hear the reason?

A. I never enquired from any person likely to inform me.

Q. Never from any body?

A. Not to my knowledge.

Q. What time was you superseded?

A. About 1794.

Q. Are you married?

A. I am.

Q. Where does Mrs. *Drought* live?

A. In this town.

Q. With you?

A. No.

Q. How long since you have ceased to live together?

A. We have not cohabited those seven years.

Q. You have lived alone ever since?

A. No; I have children and men and women servants?

Q. None other?

A. None; but servants, men and women.

Q. None other?

A. There is a *French* tutorefs in the house, Sir.

Q. Is her name *Frazer*?

A. No.

Q. Is there such a woman living with you?

A. There is.

Q. In what capacity?

A. Housekeeper.

Q. She is a *Scotch* woman from her name?

A. I believe so—but she has lived in *England*.

Q. How long have you been in *Dublin*?

A. About 24 hours.

Q. What brought you here?

A. Two reasons:—one is, that I have been summoned—another was to prevail upon my wife to come and live with me.

Q. And with the housekeeper and tutorefs?

A. I have two houses.

Q. And your wife was to live with the tutorefs?

A. Not in the same house with either of them.

Q. Then you had two reasons for coming?

A. I like to kill two birds with one stone.

Q. How

- Q. How many children have you?
A. Nine children.
Q. Did you mean to invite your wife to live with these nine children?
A. I intended she should live with her own children and superintend their education.
Q. Do you know Mr. Bernard?
A. I do, he is my next neighbour.
Q. Did you ever pay him a bet.
A. I do not recollect.—I staked my bill with him.
Q. Did you ever lay any other bet with him?
A. I do not recollect accurately; but I was told I laid a bet with him, when I was drunk.
Q. What was it?
A. It was something respecting this country.
Q. In what particular?
A. I cannot say exactly.
Q. Was it about the longitude?
A. No, Sir.
Q. What was it then?
A. Respecting the government of it.
Q. Was it, whether this was a republican, or a kingly government—You have but a faint recollection of it?
A. Very faint.
Q. When was it made?
A. In 1792 or 1793.
Q. About the time you were superseded in the commission?
A. It was not: it was made a long time before it.
Q. Then you speak of this bet from information from others, not from your own knowledge?
A. I have some little recollection of it.
Q. Was it ever reduced to writing?
A. I believe it was.
Q. Were not the opinions of counsel taken upon the legality of the wager?
A. Yes, there were: I heard there were opinions taken by the other gentleman.
Q. Did you take any opinion yourself?
A. I believe, I did.
Q. Did you hold, that *Ireland* would be a republic in two years?
A. No.

Q. In

Q. In what time then?

A. In four years, as I have heard.

Q. What was the amount of the sum?

A. The sum was 1000*l*.

Q. The time has elapsed?

A. It certainly has.

Q. You had not the least inclination, that the event upon which you betted should prove true?

A. Certainly, not.

Q. You had an honest hope at the time you made the bet for 1000*l*. that you might lose it?

A. I suppose so, if I had any thought about it.

Q. Were you sober, when you took the legal opinion?

A. I was.

Q. Was that opinion taken until very near the time the bet was to become payable?

A. Not till very near the time.

Q. When Capt. *Armstrong* mentioned the atheistical opinions, you were filled with horror?

A. I certainly was.

Q. You was actually shocked at his communicating such opinions to you?

A. Yes:—I was.

Q. Whether was it the Captain or yourself, that had the education of your children?

A. A schoolmaster.

Q. What school did your son go to?

A. Mr. *Bonafous* and Mr. *Carey* in *Portarlington*.

Q. Did you hear that your son while at school professed atheistical opinions?

A. I never did.

Q. Did you ever profess any opinions of the same nature?

A. I never did.

Q. How did it happen, that Captain *Armstrong* let himself out to a gentleman of your extremely religious turn, and precise mode of thinking?

A. I do not pretend to be a devotee, Sir.

Q. But you expressed great horror at his opinions?

A. I did.

Q. How came him to mention the matter to a person of your precise mode of expression and grave turn?

A. He did not select me: he mentioned it in public—even in the Grand Jury room.

Q. Can

Q. Can you mention any one, who was present?

A. I certainly could.

Q. Did he mention it to Mr. *Bernard*?

A. I cannot say.

Q. Can you mention any body?

A. He mentioned it to myself and my brother, and to Mr. *Armstrong* of *Clara*.

Q. Who is that Mr. *Armstrong*?

A. He is a relation of mine.

Q. You are in the militia?

A. No.

Q. In the yeomanry?

A. No:—I was formerly in the volunteers.

Q. You have never taken a military employment since that time?

A. No.

Q. You have lived in the country since the rebellion broke out?

A. I have.

Q. And have taken no part to prevent the rebellion for which you were betting?

A. I was not betting for rebellion.

Q. Did you take any active part in suppressing the insurrection and rebellion for which you betted, but which you were anxious to lose?

A. I have been active in suppressing mischief.

Q. In what way?

A. With a priest of the neighbourhood, going through the people to prevail upon them to give up their arms and take the oath of allegiance.

Q. When were you last in *Dublin* before the last twenty-four hours?

A. A week ago.

Q. Whom did you associate with that time?

A. Several.

Q. Did you meet the Prisoners?

A. No.

Q. Did you meet any of their friends?

A. I did; Mr. *Fleming*.

Q. What is he?

A. An attorney.

Q. Did you know he was a friend of the *Shearcs's*?

A. I found it out.

Q. Did

Q. Did you take an opportunity of telling him, you could give useful evidence for the *Sheares's*?

A. I did not.

Q. Whom did you tell it to?

A. I did not tell it to any one:—I did not mention it unless in consequence of a person asking me, that I could tell something in their favour.

Q. Upon your oath, who happened to ask you, whether you could give such evidence, or not?

A. Who asked me?—Mr. *Fleming*.

Q. Did he ask that before you mentioned you could serve the *Sheares's* upon their trial?

A. Upon my oath. he asked me, before I mentioned any thing.

Q. What did he ask you?

A. Whether I knew this Mr. *Armstrong*?

Q. Was that before you intimated any thing?

A. It was.

Q. Had you known the Mr. *Sheares's*?

A. I had some knowledge of one of them.

Q. Which of them?

A. Mr. *Henry Sheares*—he had been at the same school—but he was my junior: I forgot him, till I saw him some time back.

Q. When was that?

A. Three years ago.

Q. Did your acquaintance continue down to the present time?

A. It did not.

Q. Did you ever see him since that time?

A. I did; I met him in the street.

Q. Had you any conversation with him?

A. Only shaking him by the hand and asking him how he was.

Q. Did any body else beside Mr. *Fleming*, converse with you upon the subject of the trial?

A. I believe there might.

Q. Who?

A. Mr. *Fleming's* brother.

Q. Any other?

A. I do not recollect.

Q. Did they ask you merely, if you knew any thing of *John-Warneford Armstrong*?

A. Upon my oath, I do not recollect to whom I had spoken

spoken; my brother spoke to me last *Sunday*, with horror, at his relation having acted the part he did.

Q. You agreed with him in that idea? of the shameful part he acted in coming forward to give evidence?

A. No, but the treachery of him, his principles and atheistical opinions.

Q. Great horror and indignation were expressed by your speeches?

A. Yes.

Q. What was it raised these sensations in both you and your brother?

A. The treachery I mentioned.

Q. Of what?

A. The manner in which he had acted towards them.

Q. That who acted?

A. That Captain *Armstrong* had acted towards the *Sheares*.

Q. Do you not believe that he acted with the approbation of the Colonel and Mr. *Clibborn* his Captain?

A. I do not.

Q. Do you know Colonel *L'Estrange*?

A. Yes:—But I thought you meant Sir *Laurence Parsons* was his Colonel.

Q. But was not his conduct with the approbation of Captain *Clibborn* and Colonel *L'Estrange*?

A. Upon my oath I do not know; but I do not believe it.

Q. If Captain *Clibborn* swore it would you believe him?

A. I believe I would.

Q. Do you not believe, that Colonel *L'Estrange* is as good a judge of honour as you, or your worthy brother?

A. I doubt it.

Q. What is the opinion of the *King's County* upon that subject?

A. I do not think the *King's County* entertain as good an opinion of his honour, as of my brother.

Q. And of your own?

A. If you will excuse me, I had rather decline answering that question.—I may entertain as good an opinion of myself as of my brother.

ROBERT

ROBERT BRIDE, Esq. *Sworn.*

Q. What is your profession ?

A. A Barrister.

Q. How long have you been called to the Bar ?

A. In *Hilary*, 1795.

Q. Do you know a gentleman of the name *John-Warneford Armstrong* ?

A. I do.

Q. Do you recollect having been in his company within these six or eight months ?

A. I have frequently.

Q. Did you upon any of these occasions hear him express any opinion touching the moral obligation of an oath ?

A. I do recollect an expression one evening.

Q. What was that ?

A. It was slighting the obligation of an oath.

Q. Pray in what way was it slighting it ?

A. I do not recollect the particular expression ; but the substance was making light of it.

Q. Do you recollect his giving any reason, why he thought so ?

A. I am pretty sure he did not assign any reason for it. — I cannot say positively.

Q. Did you say any thing to him upon the subject ?

A. I do not recollect, that I said any thing ; but I shewed indignation at it, either by word or action.

Q. Do you recollect in whose chamber it was ?

A. I do, it was Mr. *Browne's* in the College.

Q. Do you recollect whether any other persons in the company expressed indignation ?

A. No, I do not.

Q. Did he assign any reason for leaving the *Somerset Militia* ?

A. He said he was obliged to attend some law suits or affairs in *Dublin*.

Not Cross-examined.

CHARLES GRAYDON, Esq. *Sworn.*

Q. Are you a Barrister ?

A. I am.

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Q. Are

Q. Are you acquainted with Captain *Armstrong*?

A. I know a *John Armstrong* of the *King's County Militia*.

Q. Have you been frequently in his company?

A. Yes.

Q. Do you recollect his expressing his opinion of the moral obligation of an oath?

A. No.

Q. Did he express any opinion of a future state of rewards and punishments?

A. No; I never heard him express any precise opinion upon that subject.

Q. Have you heard him express any opinion of a supreme infinite being?

A. I do not recollect to have heard him upon that subject.

Q. Have you heard him express any political opinions?

A. I have very often; he expressed himself very freely.

Q. Do you mean that he was free and unqualified?

A. I have heard him very often in a very unqualified and violent manner.

Q. Were they republican expressions?

A. They were.

Q. Do you recollect the expression?

A. No; I speak from general impressions; he uniformly expressed opinions of that kind.

Cross-examined.

Q. From all you have heard him express, do you not think that a man who had real democratical opinions of his own might think Captain *Armstrong* a fit person to confide in?

A. He might.

JOHN BOARDMAN, Esq. *Sworn.*

Q. You are at the Bar?

A. I am.

Q. Do you know the Messrs. *Sheares's*?

A. I have.

Q. How long?

A. I believe my acquaintance commenced seven or eight years ago.

Q. You

Q. You have been intimate with them?

A. Tolerably intimate.

Q. Have you held any conversation with them upon political subjects?

A. I cannot call to my recollection, that I have.

Q. What do you consider their political characters—What principles did they profess?

A. If I were at all to collect their principles from any conversation I had, I thought them anxious to bring about a parliamentary reform and Catholic emancipation.—No further, as far as I could collect.

Cross-examined.

Q. You are a Lieutenant in the *Lawyer's Corps*?

A. I have that honour.

Q. If the Prisoners entertained any other views, going further than you have mentioned, they would be cautious in committing them to you?

A. I should think they would—or they would be very unwise in mentioning them to me.

Q. How long have you been a member of the Corps?

A. Since its first institution.—But I beg leave to mention, that I have not had any conversation with these gentlemen, since the Corps was formed, except once with Mr. *John Sheares*, in company with a large party, and there we happened to be near each other; and I could there collect that his sentiments were communicated to the same import.

Q. *By the Court.* How long ago was that?

A. In the beginning of Spring, I believe in *March*.

Mr. *John Sheares*. I wish to remind Mr. *Boardman*, whether I did not regret, that reform did not take place, as the best mode to prevent revolution, which would take place if not prevented by reform?

A. I do recollect, that Mr. *Sheares* made use of expressions to that effect.

Not Cross-examined.

EDWARD HOARE, Esq. Sworn.

Q. Are you acquainted with the Messrs. *Sheares's*?

A. I am, perfectly.

Q. How

Q. How long ?

A. A great many years, and their father before them.

Q. From their childhood ?

A. Yes, particularly *John Sheares*.

Q. Have you had frequent opportunities of conversing with them upon political subjects ?

A. I cannot say, I have had frequent opportunities.

Q. Have you heard them express their opinions upon the state of the country without reserve ?

A. I have.

Q. What did their opinions appear to be ?

A. Their political opinions went very much as to men and measures.

Q. What appeared to be their particular object ?

The Counsel for the Crown objected to this species of evidence as not admissible.

Lord CARLETON General character as to loyalty is evidence, but expressions upon particular occasions are not.

Q. Did you from all the opportunities you had of collecting their opinions, collect whether they were loyal or not ?

The Counsel for the Crown also objected to this question.

Mr. Baron SMITH. This examination as to loyalty of character, should be like the examination into moral character—it should be their *general* character for loyalty, or otherwise, and not particular conversations.

Mr. McNALLY. My Lord, in *Tooke's* case, particular conversations were admitted.

Lord CARLETON. As to what was done in that case, there was a difference from this :—There the charge was, that under colour of a reform in parliament they intended to subvert the Government : they court thought that matter might receive explanation from the particular measures under discussion by the Prisoner.

Q. Pray,

Q. Pray, Sir, do you know what the general character of the Messrs. *Sheares's* is with regard to loyalty?

A. With regard to report, I did hear reports to the disadvantage of the Messrs. *Sheares's*, and from my regard to them, I asked them a question upon the subject.

It was objected, that the witness could not give their answer in evidence.

Lord CARLETON. The declarations of a Prisoner are evidence against him, but are not evidence for him, unless they are part of the original transaction.

Mr. ATTORNEY GENERAL. My Lords, I consent, that the evidence be given, in order to relieve the Court and the Counsel from any embarrassment upon the subject.

But the Counsel for the Prisoners said they would not examine the witness any further.

CHICHESTER ST. LEGER, Esq. *Sworn.*

Q. Have you been long acquainted with the Messrs. *Sheares's*?

A. I have for a great while.

Q. During that entire acquaintance with them, what is your opinion as to their general character?

A. The very best that I could conceive any men to possess.

Q. And you have known them a considerable length of time?

A. I have, since I was six years old—I believe, I have not known the elder so long as *John*; he was at the same school with me.

Q. But your acquaintance with Mr. *Henry Sheares* is not very recent?

A. Not at all—14 or 15 years.

THOMAS CASEY, Esq. *Sworn.*

Q. You are a gentleman of the Bar?

A. I am.

Q. Are you acquainted with Messrs. *Henry* and *John Sheares*?

A. With them both,

Q. Have

Q. Have you been long and well acquainted with them?

A. I have been well acquainted with both, but most particularly with *John Sheares*.

Q. What was their general moral characters?

A. Their general moral characters was as good, as great and as high as that of any man I knew—With regard to Mr. *John Sheares*, I have lived with him a long time, and during that time, I never had an occasion not to admire, esteem and respect him; and that was for a period of 18 months, during which we lived together.

Q. Did you consider them as men likely to encourage murder and bloodshed?

A. With regard to Mr. *Henry Sheares*, I do not conceive it:—With regard to Mr. *John Sheares*, if it be possible—I do conceive there must have been as great a revolution in his mind as any where upon the face of the earth—and I do recollect about two years ago or upwards, that I did hear *John Sheares* in as warm a manner as I ever heard him speak truth to me upon any occasion, say, that he would be the first to take arms against a foreign enemy, and the last to lay them down.

Cross-examined.

Q. You confine what you say to their moral character?

A. I mean it to the full extent of what I have said: I speak of their moral character: and to their political, as far forth as my words can reach.

Q. Do you speak as to their political character for the last 12 months?

A. Our acquaintance for the last 12 months was not much, though our friendship did not abate:—I recollect an Assizes at *Cork*, we had some conversation; he and I talked upon men and measures, upon which we differed. He spoke with confidence to me, as two men may in conversation. He spoke against a revolution and a foreign enemy.

Q. The conversation would have terminated, if he had intimated a contrary opinion.

A. I do not know, for I would have endeavoured to persuade him to be of my opinion, which is full and entirely

tirely contrariant.—I would not give him up while I had a hope of him, nor till I had a solid reason to the contrary.

JOHN LEECH, Esq. Sworn.

Q. Do you know Messrs. *Henry* and *John Sheares*?

A. I know Mr. *John Sheares* very well—but not much of Mr. *Henry Sheares*.

Q. What is the general and moral character of Mr. *John Sheares*?

A. Very amiable, and I never knew any thing to his disadvantage.

Q. So far as you knew Mr. *Henry Sheares*, what has been his general character?

A. So far as it came to my knowledge, I always heard it was a good one.

Q. What has been his domestic character?

A. A very good father, and kind husband.

Here the case closed.

Mr. CURRAN. My Lord, before I address you or the Jury, I would wish to make one preliminary observation—It may be an observation only—it may be a request:—for myself, I am indifferent—but I feel I am now unequal to the duty—I am sinking under the weight of it—We all know the character of the Jury:—the interval of their separation must be short, if it should be deemed necessary to separate them. I protest, I have sunk under this trial. If I must go on, the Court must bear with me—The Jury may also bear with me:—I will go on until I sink.—But after a sitting of 16 hours, with only 20 minutes interval, in these times, I should hope, it would not be thought an obtrusive request, to hope for a few hours interval of repose, or rather for recollection.

Lord CARLETON. What say you, Mr. ATTORNEY GENERAL?

Mr. ATTORNEY GENERAL. My Lords, I feel such public inconvenience from a djourning cases of this kind, that I cannot consent. The counsel for the Prisoners cannot be more exhausted than those for the prosecution—If they do not choose to speak to the evidence, we shall give up our right to speak, and leave the matter to the Court

Court altogether—They have had two speeches already; and leaving them unreplied to is a great concession.

Lord CARLETON. We would be glad to accommodate as much as possible. I am as much exhausted as any other; but we think it better to go on.

Mr. CURRAN. Gentlemen of the Jury. It seems, that much has been conceded to us.—God help us!—I do not know what has been conceded to me—if so insignificant a person may have extorted the remark.—Perhaps it is a concession, that I rise in such a state of mind and body—of collapse and deprivation as to feel but a little spark of indignation raised by the remark, that much has been conceded to the counsel for the Prisoner, much has been conceded to the Prisoners!—Almighty, and merciful God; who lookest down upon us, what are the times, to which we are reserved, when we are told, that much has been conceded to Prisoners who are put upon their trial at a moment like this—of more darkness and night of the human intellect, than a darkness of the natural period of 24 hours—that public convenience cannot spare a respite of a few hours to those who are accused for their lives, and that much has been conceded to the advocate, almost exhausted in the poor remark which he has endeavoured to make upon it.

My countrymen,—I do pray you, by the awful duty which you owe your country;—by that sacred duty, which you owe your character (and I know how you feel it)—I do obtest you by the Almighty God to have mercy upon my client—to save him, not from guilt, but from the baseness of his accuser, and the pressure of the treatment under which I am sinking.—With what spirit did you leave your habitations this day?—with what state of mind and heart did you come here from your family?—with what sentiments did you leave your children—to do an act of great public importance—to pledge yourselves at the throne of eternal justice by the awful and solemn obligation of an oath to do perfect, cool, impartial and steady justice between the accuser and the accused?—Have you come abroad under the idea, that public fury is clamorous for blood?—That you are put there under the mere formality

lity or memorial of death, and ought to gratify that fury with the blood for which it seems to thirst?—If you are—I have known some of you—more than one, or two, or three in some of those situations, where the human heart speaks its honest sentiments.—I think, I ought to know you well—you ought to know me—and there are some of you, who ought to listen to what so obscure an individual may say, not altogether without some degree of personal confidence and respect.—I will not solicit your attention by paying the greatest compliments which man can pay to man;—but I say, I hold you in regard as being worthy of it—I will speak such language as I would not stoop to hold, if I did not think you worthy of it—Gentlemen, I will not be afraid of beginning with what some may think I should avoid, the disastrous picture which you must have met upon your way to this Court—A more artful advocate might endeavour to play with you, in supposing you to possess a degree of pity and of feeling beyond that of any other human Being—But I, gentlemen, am not afraid of beginning by warning you against those prejudices, which all must possess—by speaking strongly against them—by striking upon the string—if not strong enough to snap it—will wake it into vibration. Unless you make an exertion beyond the power almost of men to make, you are not fit to try this cause. You may preside at such an execution as the witness would extol himself for—at the sentence flowing from a very short enquiry into reason—But you are not fit to discharge the awful trust of honest men coming into the box, indifferent as they stand unsworn, to pronounce a verdict of death and infamy or of existence and of honour. You have only the interval between this and pronouncing your verdict to reflect, and the other interval when you are resigning up your last breath, between your verdict and your grave, when you may lament that you did not as you ought.

Do you think, I want to flatter your passions?—I would scorn myself for it. I want to address your reason—to call upon your consciences—to remind you of your oaths, and the consequence of that verdict, which upon the law and the fact you must give between the accuser and the accused. Part of what I shall say, must of necessity be addressed to the Court; for it is matter of law:—But upon this subject, every observation in point of law is so inseparably blended with the fact, that I cannot
U pretend

pretend to say, that I can discharge your attention, gentlemen, even when I address the Court—On the contrary, I shall the more desire your attention, not so much that you may understand what I shall say, as what the Court shall say.

Gentlemen, this indictment is founded upon the stat. 25 Ed. 3. The statute itself begins with a melancholy observation upon the proneness to deterioration, which has been found in all countries unfortunately to take place in their criminal law, particularly in the law respecting high treason. The stat. begins with reciting, that in the uncertainty of adjudications, it became difficult to know what was treason and what was not, and to remove further difficulty it professes to declare all species of treason, that should thereafter be so considered, and by thus regulating the law to secure the state and the constitution and the persons of those interested in the executive departments of the government, from the common acts of violence, that might be used to their destruction. The three first clauses of the statute seem to have gone a great way indeed upon the subject; because the object of the provisions was to protect the person—and I beg of you to understand what I mean by person—I mean the *natural person*; I mean no figure of speech—not the monarch in the abstract, but the natural man:—the first clause was made without the smallest relation to the *Executive power*, but solely to the natural body and person. The words are, “when a man doth *compass* or imagine the death of the King, or of our Lady his Queen, or their eldest son and heir, and thereof be upon sufficient proof attainted of open deed by men of his condition, he shall be a traitor.”—This I say relates only to the natural person of the King—The son and heir of the King is mentioned in the same manner, but he has no power, and therefore a compassing his death, must mean the death of his natural person, and so must it be in the case of the King. To conceive the purpose of destroying a common subject was once a felony of death, and that was expressed in the same language, *compassing* and *imagining* the death of the subject. It was thought right to dismiss that severe rigour of the law in the case of the subject, but it was thought right to continue it in the case of the King, in contradistinction to all the subjects within the realm.

The statute after describing the persons, describes what shall be evidence of that high and abominable guilt:—it
must

must appear by open deed—the intention of the guilty heart must be proved by evidence of the open deed committed towards the accomplishment of the design. Perhaps in the hurry of speaking—perhaps from the mistakes of reporters; sometimes from one and sometimes from the other, Judges are too often made to say, that such or such an overt act is, if proved to have been committed, ground upon which the Jury must find the party guilty of the accusation. I must deny the position, not in the reason of the thing, but I am fortified by the ablest writers upon the law of treason. In the reason of the thing, because the design entertained and act done are matters for the Jury. Whether a party compassed the King's death or not is matter for the Jury: and therefore if a certain fact be proved, it is nonsense to say, that such a conclusion *must* follow; because a conclusion of law would then be pronounced by the Jury, not by the Court. I am warranted in this by the writers cited by Mr. *Justice* FOSTER; and therefore, gentlemen, upon the first count in the indictment, you are to decide a plain matter of fact—1st. Whether the Prisoner did compass and imagine the death of the King?—and whether there be any act proved or apparent means taken, which he resorted to for the perpetration of that crime?—Upon this subject, many observations have already been made before me. I will take the liberty of making one:—I do not know, whether it has been made before. Even in a case where the overt act stated has of its own nature gone to the person of the King, still it is left to the Jury to decide, whether it was done with the criminal purpose alleged, or not. In *Russell's* case, there was an overt act of a conspiracy to seize the guards—the natural consequence threatened from an act of gross violence so immediately approaching the King's person, might fairly be said to affect his life, but still it was left to the Jury to decide, whether that was done for the purpose of compassing the King's death. I mention this, because I think it a strong answer to those kind of expressions, which in bad times fall from the mouths of prosecutors, neither law, nor poetry, but sometimes half metaphysical. Laws may be enacted in the spirit of sound policy and supported by superior reason; but when only half considered and their provisions half enumerated, they become the plague of the government and the grave of principle. It is that kind of refinement and cant which overwhelmed the law of treason, and brought it to a

meta-

metaphysical death; the laws are made to pass through a contorted understanding, vibratory and confused, and therefore after a small interval from the first enactment of any law in *Great Britain*, the dreams of fancy get around, and the law is lost in the mass of absurd comment. Hence it was that the stat. gave its awful declarations to those glossarisms, so that if any case arise, apparently within the statute, they were not to indulge themselves in conjecture, but refer to the standard and abide by the law as marked out for them. Therefore, I say, that the issue for the Jury here is to decide in the words of the stat. whether the Prisoners did compass the death of the King, and whether they can say upon their oaths, that there is any overt act proved in evidence manifesting an intention of injury to the natural person of the King?

I know that the semblance of authority may be used to contradict me; if any man can reconcile himself to the miserable toil of poring over the records of guilt, he will find them marked, not in black, but in red, the blood of some unfortunate men leaving the marks of folly, barbarity and tyranny. But I am glad that men, who in some situations appear not to have had the pulse of honest compassion have made sober reflexions in the hour of political disgrace. Such has been the fate of *Lord COKE*, who in the triumph and insolence of power pursued a conduct, which in the hour of calm retreat, he regretted in the language of sorrow and disappointment. He then held a language, which I willingly repeat—"That a conspiracy to levy war was no act of compassing the *murder* of the King."—There he spoke the language of law and of good sense; for a man shall not be charged with one crime and convicted of another. It is a narrow and a cruel policy to make a conspiracy to levy war an act of compassing the King's death; because it is a separate and distinct offence—because it is calling upon the honest affections of the heart and creating those pathological effusions, which confound all distinct principles of law, a grievance not to be borne in a state, where the laws ought to be certain.

This reasoning is founded upon the momentary supposition, that the evidence is true; for you are to recollect the quarter from whence it comes; there has been an attempt by precipitate confession to transfer guilt to innocence in order to escape the punishment of the law. Here,
gentlemen,

gentlemen, there is evidence of levying war, which act, it is said, tends to the death of the King: That is a constructive treason, calculated as a trap for the loyalty of a jury; therefore you should set bounds to proceedings of that kind; for it is an abuse of the law, to make one class of offence, sufficiently punished already, evidence of another. Every court and every jury should set themselves against crimes, when they come to determine upon distinct and specified guilt;—they are not to encourage a confusion of crimes by disregarding the distinction of punishments, nor shew the effusion of their loyalty by an effusion of blood.

I cannot but say, that when cases of this kind have been under judgment in *Westminster-Hall*, there was some kind of natural reason to excuse this confusion in the reports—the propriety of making the person of the King secure—a war immediately adjoining the precincts of the palace—a riot in *London* might endanger the life of the King. But can the same law prevail in every part of the *British* empire. It may be an overt act of compassing the King's death to levy war in *Great Britain*: But can it be so in *Jamaica*, in the *Bahama Islands*, or in *Corfica*, when it was annexed to the *British* empire? Suppose at that time, a man had been indicted there for compassing the King's death, and the evidence was, that he intended to transfer the dominion of the island to the *Genoese* or the *French*; what would you say, if you were told, that was an act by which he intended to murder the King? By seizing *Corfica* he was to murder the King! How can there be any immediate attempt upon the King's life by such a proceeding? It is not *possible*, and therefore no such consequence can be *probably* inferred—and therefore I call upon you to listen to the Court with respect:—but I also call upon you to listen to common sense and consider, whether the conspiring to raise war can in this country be an overt act of compassing the King's death in this country? I will go further.—If the stat of *Edw. 3.* had been conceived to make a conspiracy to levy war an overt act of compassing the King's death, it would be unnecessary to make it penal by any subsequent statute—and yet subsequent statutes were enacted for that purpose, which I consider an unanswerable argument, that it was not considered as coming within the purview of the clause against compassing the King's death.

Now,

Now, gentlemen, you will be pleased to consider, what was the evidence brought forward to support this indictment. I do not think it necessary to exhaust your attention by stating at large the evidence given by Captain *Armstrong*. He gives an account which we shall have occasion to examine with regard to its credibility:—he stated his introduction, 1st, to Mr. *Henry Sheares*, afterwards to his brother, and he stated a conversation, which you do not forget; so strange has it been! But in the whole course of his evidence, so far from making any observation, or saying a word of connexion with the power at war with the King, he expressly said, that the insurrection, by whomsoever prepared, or by what infatuation encouraged, was to be a *home* exertion, independent of any foreign interference whatever. And therefore I am warranted in saying, that such an insurrection does not come within the first clause of the statute. It cannot come within the second of adhering to the King's enemies, because that means his *foreign* enemies, and here so far from any intercourse with them, they were totally disregarded.

Adhering to the King's enemies means co-operating with them, sending them provisions, or intelligence, or supplying them with arms. But I venture to say, that there has not been any one case, deciding that any act can be an adherence to a foreign enemy, which was not calculated for the advantage of that enemy. In the case of *Jackson*, *Hensley* and Lord *Preston*, the parties had gone as far as they could in giving assistance. So it was in *Quigley's*. But in addition to this, I must repeat, that it is utterly unnecessary the law should be otherwise, for levying war is, *of itself*, a crime; therefore it is unnecessary by a strained construction to say, that levying war, or conspiring to levy war should come within any other clause equally penal, but not so descriptive.

But, gentlemen, suppose I am mistaken in both points of my argument, suppose the Prisoners (if the evidence were true) did compass the King's death, and adhere to the King's enemies, what are you to found your verdict upon? Upon your oaths:—what are they to be founded upon?—Upon the oath of the witness—and what is that founded upon?—Upon this, and this only—that he does believe there is an eternal God—an intelligent supreme existence, capable of inflicting eternal punishment for offences—or conferring eternal compensation, upon man after he has
passed

passed the boundary of the grave.—But where the witness believes, he is possessed of a perishing soul, and that there is nothing upon which punishment or reward can be exerted, he proceeds regardless of the number of his offences, and undisturbed by the terrors of exhausted fancy which might save you from the fear, that your verdict is founded upon perjury.—I suppose he imagines, that the body is actuated by some kind of animal machinery.—I know not in what language to describe his notions—suppose his opinion of the beautiful system framed by the Almighty hand to be, that it is all folly and blindness compared to the manner in which he considers himself to have been created—or his abominable heart conceives its ideas, or his tongue communicates his notions.—Suppose him, I say, to think so—what is perjury to him? He needs no creed, if he thinks his miserable body can take eternal refuge in the grave and the last puff of his nostrils can send his soul into annihilation!—He laughs at the idea of eternal justice and tells you, that the grave into which he sinks, as a log, forms an entrenchment against the throne of God, and the vengeance of exasperated justice!

Do you not feel, my fellow countrymen, a sort of anticipated consolation, in reflecting, that the religion which gave us comfort in our early days, enabled us to sustain the stroke of affliction and endeared us to one another, and when we see our friends sinking into the earth, fills us with the expectation, that we rise again,—that we but sleep for a while to wake for ever.—But what kind of communion can you hold—what interchange expect—what confidence place in that abject slave—that condemned, despaired of wretch, who acts under the idea, that he is only the folly of a moment—that he cannot step beyond the threshold of the grave—that that which is an object of terror to the best and of hope to the confiding, is to him contempt, or despair?

Bear with me, my countrymen, I feel my heart run away with me—the worst men only can be cool.—What is the law of this country?—If the witness does not believe in God, or a future state, you cannot swear him.—What swear him upon? Is it upon the book—or the leaf?—You might as well swear him by a bramble or a coin. The ceremony of kissing is only the external symbol, by which man seals himself to the precept and says,—“May God so help me, as I swear the truth.”—He is then attached to
the

the divinity upon the condition of telling truth, and he expects mercy from heaven, as he performs his undertaking.—But the infidel!—By what can you catch his soul—or by what can you hold it?—You repulse him from giving evidence—for he has no conscience—no hope to cheer him—no punishment to dread!—What is the evidence touching that unfortunate young man? What said his own relation, Mr. *Shervington*? He had talked to him freely—had known him long—What kind of character did he give of him? *Paine* was his creed, and his philosophy.—He had drawn his maxims of politics from the vulgar and furious anarchy broached by Mr. *Paine*.—His ideas of religion were adopted from the vulgar maxims of the same man, the scandal of enquiry—the blasphemer of his God as of his King. He bears testimony against himself that he submitted to the undertaking of reading both his abominable tracts,—that abominable abomination of all abominations, “*Paine’s Age of Reason*,”—professing to teach mankind, by acknowledging, that he did not learn himself!—working upon debauched and narrow understandings—Why not swear the witness upon the vulgar maxims of that base fellow, that wretched outlaw and fugitive from his country and his God?—Is it not lamentable to see a man labouring under an incurable disease and fond of his own blotches? “Do you wish, says he, to know my sentiments with regard to politics, I have learned them from *Paine*! I do not love a King—and if no other executioner could be found, I would myself plunge a dagger into the heart of *George III.*—because he is a King—and because he is my King, I swear by the sacred missal of *Paine*, I would think it a meritorious thing to plunge a dagger into his heart, to whom I had devoted a soul, which Mr. *Paine* says, I have not to lend.” Is this the casual effusion of a giddy young man, not considering the meaning of what he said?—If it were said among a parcel of boarding-school misses, where he might think he was giving specimens of his courage by nobly denying religion, there might be some excuse.—There is a latitude assumed upon some such occasions.—A little blasphemy and a little obscenity passes for wit in some companies.—But recollect, it was not to a little miss, whom he wished to astonish, that he mentioned these sentiments—but a kinsman, a man of that boiling loyalty.—I confess I did not approve of his conduct in the abstract—talking of
running

running a man through the body—but I admired the honest boldness of the soldier who expressed his indignation in such warm language.—If Mr. *Shervington* swore true, Captain *Armstrong* must be a forsworn witness—it comes to that simple point.—You cannot put it upon other ground.—I put it to your good sense—I am not playing with your understandings—I am putting foot to foot and credit to credit. One or other of the two must be perjured—Which of them is it? If you disbelieve Captain *Armstrong* can you find a verdict of blood upon his evidence?

Gentlemen, I go further—I know your horror of crimes—your warmth of loyalty. They are among the reasons, why I respect and regard you.—I ask you then, will you reject such a witness?—or would you dismiss the friend you regarded, or the child you loved upon the evidence of such a witness? Suppose him to tell his own story,—“I went to your friend, or your child—I addressed myself in the garb of friendship—in the smile of confidence—I court—ed confidence in order to betray it—I traduced you—spoke all the evil I could against you to inflame him—I told him your father does not love you.”—If he went to you and told you this—that he inflamed your child and abused you to your friend, and said, “I come now to encrease it by the horror of superadded cruelty,”—would you dismiss from your love and affection the child or the friend you loved for years?—You would not prejudge them.—You would examine the consistency of the man’s story; you would listen to it with doubt and receive it with hesitation.

Says Capt. *Armstrong*, “*Byrne* was my bookseller—from him I bought my little study of blasphemy and obscenity with which I amused myself.”—“Shall I introduce Mr. *Sheares* to you?”—not saying which.—What is done then—He thought it was not right till he saw Capt. *Clibborn*. Has he stated any reason, why he supposed Mr. *Sheares* had any wish at all to be introduced to him?—any reason for supposing, that *Byrne*’s principles were of that kind, or any reason, why he imagined the intercourse was to lead to any thing improper?—It is most material, that he says, he never spoke to *Byrne* upon political subjects, therefore he knew nothing of *Byrne*’s principles nor *Byrne* of his—But the proposal was made and he was so alarmed, that he would not give an answer till

he saw his Captain.—Is not this incredible?—There is one circumstance which made an impression upon my mind, that he assumed the part of a public informer, and in the first instance, came to the field with pledgets and bandages—he was scarcely off the table, when a witness came to his credit.—It is the first time, that I saw a witness taking fright at his own credit, and sending up a person to justify his character.

Consider how he has fortified it:—He told it all to Capt. *Clibborn*!—He saw him every evening, when he returned, like a bee, with his thighs loaded with evidence. What is the defence?—That the witness is unworthy of belief—My clients say, their lives are not to be touched by such a man;—he is found to be an informer—he marks the victim—You know the world too well, not to know that every falsehood is reduced to a certain degree of malleability by an alloy of truth—Such stories as these are not pure and simple falsehoods—look at your *Oates*, your *Bedloes*, and *Dugdales*!—I am disposed to believe, shocking as it is, that this witness had the heart, when he was surrounded by the little progeny of my client,—when he was sitting in the mansion in which he was hospitably entertained—when he saw the old mother supported by the piety of her son, and the children basking in the parental fondness of the father—that he saw the scene and smiled at it---contemplated the havoc he was to make, consigning them to the storms of a miserable world without having an anchorage in the kindness of a father! Can such horror exist, and not waken the rooted vengeance of an eternal God?---But it cannot reach this man beyond the grave---Therefore, I uphold him here.--I can imagine it, gentlemen, because, when the mind becomes destitute of the principles of morality and religion, all within the miserable being is left a black and desolated vast, never cheered by the rays of tenderness and humanity---When the belief of eternal justice is gone from the soul of man, horror and execution may set up their abode. I can believe, that the witness---with what view, I cannot say---with what hope I cannot conjecture---You may---did meditate the consigning of these two men to death, their children to beggary and reproach—abusing the hospitality with which he was received, that he might afterwards come here and crown his work, having obtained the little spark
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of truth by which his mass of falsehood was to be put into animation.

I have talked of the inconsistency of the story—Do you believe it, gentlemen? The case of my client is, that the witness is perjured, and you are appealed to in the name of that ever-living God whom you revere, but whom he despiseth, to consider, that there is something to save him from the baseness of such an accuser.

But I go back to the testimony—I may wander from it, but it is my duty to stay with it. Says he, “*Byrne* makes an important application—I was not accustomed to it—I never spoke to him, and yet he, with whom I had no connexion introduces me to *Sheares*.—This is a *true brother*.” You see, gentlemen, I state this truly—he never talked to *Byrne* about politics; how could *Byrne* know his principles? By inspiration? He was to know the edition of the man, as he knew the edition of books—“You may repose all confidence.”—I ask not is this true; but I say it can be nothing else than false. I do not ask you to say it is doubtful—it is a case of blood—of life or death, and you are to add to the terrors of a painful death, the desolation of a family, overwhelming the aged with sorrow and the young with infamy.—Gentlemen, I should disdain to reason with you; I am pinning your minds down to one point, to shew you to demonstration, that nothing can save your minds from the evidence of such perjury—not because you may think it false—but because it is impossible it can be true. I put into the scales of justice that execrable perjury, and I put into the other, the life, the fame, the fortune, the children of my client. Let not the balance tremble as you hold it—and as you hold it now, so may the balance of eternal justice be held for you.

But is it upon his inconsistency only I call upon you to reject him? I call in aid the evidence of his own kinsman, Mr. *Shervington* and Mr. *Drought*, the evidence of Mr. *Bride* and Mr. *Graydon*. Before you can believe *Armstrong*, you must believe that all those are perjured—What are his temptations to perjury?—The hope of bribery and reward—and he did go up with his sheets of paper in his hand—here is one, it speaks treason—here is another—the accused grows paler—here is a third, it opens another vein.—Had *Shervington* any temptation of that kind?—No, let not the honest and genuine soldier lose the credit of it.—He has paid a great compliment to the proud integrity of the King,

King, his master, when he did venture, at a time like this to give evidence—"I would not have come for 100 guineas."—I could not refuse the effusion of my heart, and exclaiming, May the blessings of God pour upon you, and may you never want 100 guineas!

There is another circumstance—I think I saw it strike your attention, my Lords—it was the horrid tale of the three servants whom he met upon the road—they had no connexion with the rebels—if they had they were open to a summary proceeding.—He hangs up one, shoots a second, and administers torture to the body of the third, in order to make him give evidence.—Why, my Lords, did you feel nothing stir within you—our adjudications had condemned the application of torture for the extraction of evidence.—When a wild and furious assassin had made a deadly attempt upon a life of much public consequence, it was proposed to put him to the torture in order to discover his accomplices. I scarcely know whether to admire most the awful and impressive lesson given by *Felton*, or the doctrine stated by the Judges of the land. "No"—said he, "put not the torture; for in the extravagance of my pain I may be brought to accuse yourselves."—What say the Judges? "It is not allowable by the Law and Constitution of England to inflict torture upon any man, or to extract evidence under the coercion of personal sufferings." Apply that to this case—if the unfortunate man did himself dread the application of such an engine for the extraction of evidence, let it be an excuse for his degradation, that he sought to avoid the pain of body by public infamy. But there is another observation more applicable. Says Mr. *Drought*—"Had you no feeling, or do you think you will escape future vengeance?"—"Oh, Sir, I thought you knew my ideas too well to talk in that way." Merciful God! Do you think it is upon the evidence of such a man, that you ought to consign a fellow-subject to death?—He who would hang up a miserable peasant to gratify caprice, could laugh at remonstrance and say, "You know my ideas of futurity"—If he thought so little of murdering a fellow creature without trial and without ceremony, what kind of compunction can he feel within himself, when you are made the instruments of his savage barbarity?—He kills a miserable wretch, looking perhaps for bread for his children, and who falls, unaccused, uncondemned.—What compunction can he feel

feel at sacrificing other victims, when he considers death as eternal sleep and the darkness of annihilation?—These victims are at this moment led out to public execution—he has marked them for the grave—he will not bewail the object of his own work; they are passing through the vale of death, while he is dosing over the expectancy of mortal annihilation.

Gentlemen, I am too weak to follow the line of observation I had made—but I trust, I am warranted in saying, that if you weigh the evidence, the balance will be in favour of the Prisoners.

But there is another topic or two to which I must solicit your attention. If I had been stronger in a common case, I would not have said so much:—Weak as I am here, I must say more.—It may be said that the parol evidence may be put out of the case; attribute the conduct of *Armstrong* to folly, or passion, or whatever else you please, you may safely repose upon the written evidence—This calls for an observation or two—As to Mr. *Henry Sheares*, that written evidence, even if the hand-writing were fully proved does not apply to him. I do not say it was not admissible. The writings of *Sidney* found in his closet were read—justly according to some—but I do not wish to consider that now.—But I say, the evidence of Mr. *Dwyer* has not satisfactorily established the hand-writing of *John*.—I do not say, it is not proved to a certain extent; but it is proved in the very slightest manner that you ever saw paper proved—it is barely evidence to go to you, and the witness might be mistaken. An unpublished writing cannot be an overt act of treason; so it is laid down expressly by *Hale* and *Foster*. A number of cases have occurred and decisions have been pronounced, asserting, that writings are not overt acts for want of publication; but if they plainly relate to an overt act proved, they may be left to the Jury for their consideration. But here it has no reference to the overt act laid; it could not be intended for publication until *after* the unfortunate event of revolution had taken place, and therefore it could not be designed to *create* insurrection. Gentlemen, I am not counsel for Mr. *John Sheares*, but I would be guilty of cruelty, if I did not make another observation. This might be an idle composition, or the translation of idle absurdity from the papers of another country. The manner in which it was found leads me to think that the more probable.

bable. A writing designed for such an event as charged, would hardly be left in a writing box, unlocked, in a room, near the hall door. The manner of its finding also shews two things:—that *Henry Sheares* knew nothing of it, for he had an opportunity of destroying it, as Alderman *Alexander* said he had; and further, that he could not have imagined his brother had such a design, and it is impossible if the paper had been designed for such purposes, that it would not be communicated to him.

There is a point to which I will beseech the attention of your Lordships—I know your humanity, and it will not be applied merely because I am exhausted or fatigued. You have only one witness to any overt act of treason. There is no decision upon the point in this country—*Jackson's* case was the first; *Lord CLONMELL* made allusion to the point; but a Jury ought not to find guilty upon the testimony of a single witness. It is the opinion of *FOSTER*, that by the common law one witness, if believed, was sufficient. *Lord COKE's* opinion is, that two were necessary: they are great names; no man looks upon the works of *FOSTER* with more veneration than myself, and I would not compare him with the depreciated credit of *COKE*; I would rather leave *Lord COKE* to the character which *FOSTER* gives him; that he was one of the ablest lawyers, independent of some particulars, that ever existed in *England*. In the wild extravagance, heat and cruel reign of the *Tudors*, such doctrines of treason had gone abroad, as drenched the kingdom with blood. By the construction of Crown Lawyers, and the shameful complaisance of Juries many sacrifices had been made, and therefore it was necessary to prune away these excesses, by the stat. of *Edw.* 6. and therefore there is every reason to imagine from the history of the times, that *Lord COKE* was right in saying, not by new statute, but by the common law, confirmed and redeemed by declaratory acts, the trials were regulated. A law of *Philip* and *Mary* was afterwards enacted, some think it was a repeal of the stat. of *Edw.* 6. some think not. I mention this diversity of opinions with this view, that in this country, upon a new point of that kind, the weight of criminal prosecution will turn the scale in favour of the Prisoner, and that the Court will be of opinion, that the stat. 7. *W.* 3. did not enact any new thing, unknown to the common law, but redeemed it from abuse. What was the state of *England*? The King had been declared to have abdicated

dictated the throne; prosecutions, temporising juries, and the arbitrary construction of Judges condemned to the scaffold those who were to protect the Crown—men, who knew that after the destruction of the cottage, the palace was endangered. It was not then the enactment of any thing new; it was founded in the caution of the times, and derived from the maxims of the constitution—I know the peevishness with which *Burnet* observed upon that statute; he is reprehended in a modest manner by *FOSTER*; but what says *BLACKSTONE*, of great authority, of the clearest head and the profoundest reading. He differs from *MONTESQUIEU*, the *French* philosopher.

“ In cases of treason, there is the accused’s oath of allegiance to counterpoise the information of a single witness; and that may perhaps be one reason, why the law requires a *double* testimony to convict him: though the principal reason undoubtedly is to secure the subject from being sacrificed to fictitious conspiracies, which have been the engines of profligate and crafty politicians in all ages.”*

Gentlemen, I do not pretend to say, that you are bound by an *English* act of parliament. You *may* condemn upon the testimony of a single witness.—You, to be sure, are too proud to listen to the wisdom of an *English* law—Illustrious Independants!—You may murder under the semblance of judicial forms, because you are proud of your blessed independence!—You pronounce that to be legally done, which would be murder in *England*, because you are proud!—You may imbrue your hands in blood, because you are too proud to be bound by a foreign act of parliament, and when you are to look for what is to save you from the abuse of arbitrary power, you will not avail yourself of it, because it is a foreign act of parliament!—Is that the independence of an *Irish* Jury?—Do I see the heart of any *Englishman* move when I say to him.—“ Thou servile *Briton*, you cannot condemn upon the perjury of a single witness because you are held in the tight waistcoat of the cogency of an act of parliament.” If power seeks to make victims by judicial means, an act of parliament would save you from the perjury of abominable malice.—Talk not of proud slavery to law, but lament that you are bound by the integrity and irresistible strength of

* 4 Bl. Com. 358.

right reason, and at the next step bewail, that the all powerful author of nature has bound himself in the illustrious servitude of his attributes, which prevent him from thinking what is not true, or doing what is not just. Go then and enjoy your independence.—At the other side of the water, your verdict upon the testimony of a single witness would be murder.—But here you can murder without reproach, because there is no act of parliament to bind you to the ties of social life and save the accused from the breath of a perjured informer. In *England* a jury could not pronounce conviction upon the testimony of the purest man, if he stood alone, and yet what comparison can that case bare with a blighted and marred informer? where every word is proved to be perjury, and every word turns back upon his soul?

I am reasoning for your country and your children, to the last hour of your dissolution. Let me not reason in vain. I am not playing the advocate.—You know I am not. Your conscience tells you I am not. I put this case to the Bench;—the stat. 7 *H. 3.* does not bind this country by its legislative cogency—and will you declare positively and without doubt, that it is common law, or enacting a new one?—Will you say it has no weight to influence the conduct of a Jury from the authority of a great and exalted nation? the only nation in *Europe* where liberty has seated herself.—Do not imagine, that the man, who praises liberty is singing an idle song:—for a moment, it may be the song of a bird in his cage:—I know it may. But you are now standing upon an awful isthmus—a little neck of land, where liberty has found a seat.—Look about you—look at the state of the country—the tribunals that dire necessity has introduced:—Look at this dawn of law, admitting the functions of a Jury.—I feel a comfort—methinks I see the venerable forms of *HOLT* and *HALE*, looking down upon us, attesting its continuance.—Is it your opinion, that bloody verdicts are necessary—that blood enough has not been shed! That the bonds of society are not to be drawn close again, nor the scattered fragments of our strength bound together, to make them of force; but they are to be left in that scattered state, in which every little child may break them to pieces?—You will do more towards tranquilizing the country by a verdict of mercy.—Guard yourselves against the sanguinary excesses of prejudice or revenge, and though
you

you think there is a great call of public justice, let no unmerited victim fall.

Gentlemen, I have tired you—I durst not relax.—The danger of my client is from the hectic of the moment, which you have fortitude, I trust, to withstand; in that belief, I leave him to you—and as you deal justice and mercy, so may you find it—and I hope that the happy compensation of an honest discharge of your duty may not be deferred till a future existence, which this witness does not expect, but that you may speedily enjoy the benefits you will have conferred upon your country.

Mr. PRIME SERJEANT. *My Lords and Gentlemen of the Jury*, I find myself called upon at this late hour to discharge a duty the most difficult for an advocate to perform. Though I am intrusted, on the part of the public, to apply the evidence which has been given to the several overt acts of the treason charged upon the gentlemen, unfortunately standing at the bar,—Yet the justice due to them is as much a part of my duty as the justice due to the public—and, I trust, that as my honour and conscience, call upon me, nought to extenuate which can be fairly pressed against them—so I trust they will prevent me from setting down aught in malice. The investigation of the truth is the proper duty of the Advocate, the Jury, and the Court,—and therefore it would ill become me to warm your imaginations or encrease your resentments, by stating the atrocity of the conspiracy, in which it is charged that the Prisoners at the bar were engaged; not unlike in many features, but surpassing in its extent and sanguinary design, that in which *Cataline* engaged against the *Roman* republic.—But I beseech you, gentlemen, if possible, to discharge your minds of every impression, which they may have heretofore received.—Weigh the evidence which has been given, with the caution and attention ever due in a case of life, and if you can find a loop whereon to hang a rational doubt, let the Prisoners have the advantage of it.

The gentlemen at the bar stand charged with two species of treason—compassing the King's death—and adhering to his enemies.—In cases of common criminal offences, the law is satisfied by charging the party with the specific crime, and bringing forward upon the day of trial without previous notice to the accused, such facts as shall be judged proper by his prosecutor, to establish his guilt—and in such cases the Prisoner is not entitled to the aid of counsel.—

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But in cases of high treason, such is the tenderness of the law—such is its anxiety for the safety of the subject, that it requires that the indictment, which makes the charge, should also state the overt acts by which the charge is to be established.—The law provides, that the Prisoner should be furnished with the indictment, stating those facts five clear days previous to his arraignment, and that he should have counsel and agent of his own nomination to conduct his defence. Thus he is previously apprized of the facts, which are made the foundation of his crime, and full opportunity is given to him either to controvert or explain them.

The indictment enumerates several overt acts, which I shall just now particularly state. You, in the first place, should consider and try, whether any of those acts was done by the accused—and if you find in the affirmative—then to consider the tendency of such act to the accomplishment of that treason wherewith they are charged. For I will venture to assert, that the court will inform you, that any one overt act of the tendency annexed to it by the indictment, amounts to a manifestation of that intention and imagination of the heart, which constitutes the crime of high treason. Overt acts, I should inform you, are the means made use of to effectuate the intentions. and imaginations of the heart—and I will further presume to say, that the Court will inform you, that to discover this malignant compassing of the heart, it is not necessary, that the acts or attempts should *directly* and *immediately* aim at that life which cannot be taken away without the subversion of all order and society, and involving a whole nation in blood and confusion; but that any act having a tendency, though not so immediate, to the same fatal end, will furnish abundant proof of the guilt of the heart, of the criminal intention which constitutes the crime.

Gentlemen, it is clear and certain law, that every measure tending to depose the King is an overt act of treason—words of advice or persuasion, and all consultations for that purpose are clearly so. But it was for this day reserved to broach the alarming and monstrous position—that because the King is not resident within the realm of *Ireland*, that within this kingdom there could be no treason of compassing his death—I trust in God, that the authority of such opinions has not gone abroad, and that the rebellion, which has for some time ravaged the country, has not been
matured

matured by such a doctrine—If that doctrine is well founded, all those who have suffered upon that charge in *Ireland*, suffered unjustly—Every departure of the King from *Great Britain* was a suspension of that branch of the 25th of *Edw.* 3. and while *William* the 3d and *George* 1. and 2. were out of that kingdom, fighting in support of the religion and liberties of their kingdoms, their deaths might have been compassed with impunity.—Treason does not depend on the local residence of the King; the order and well being of society requires that his person, wherever he may be, should be sacred.

The Counsel for the Prisoners have, I am sure without intending it, endeavoured not only to weaken, but indispose the public mind to, the known and acknowledged law of the land. They have endeavoured to impress upon you, that the law of *Great Britain* is more tender of the life of the subject than the law of *Ireland*; that two witnesses are there necessary to convict of high treason—that the statute which makes that provision there was declaratory of the common law; and if it was not, that yet it should be the statute law of *Ireland*—thus endeavouring to seduce you upon erroneous principles to find a verdict against evidence and against law.

This point was made upon the trial of *Jackson*, at the Bar of the Court of *King's Bench*, in *Easter Term* 1795; and upon mature deliberation, unanimously over-ruled.—All the authorities—*COKE*, *HALE*, and *FOSTER* were cited—It was again made at the *Commission* of *Oyer and Terminer*, held after *Michaelmas Term* 1795, and again over-ruled by the Judges, who presided; and it is this day again brought forward as calling for a serious discussion—If the learned Counsel for the Prisoners think it tenable, they may be justified in their endeavours.—But the present case does not warrant the objection, futile as it is. They have erroneously stated, that by the law of *Great Britain* two witnesses were necessary to the same overt act of treason. Whereas even by that law, one witness to one overt act, and another to another overt act of the same treason will be sufficient. Now, gentlemen, though the same law were enacted in *Ireland*, a law which it has been observed, *was calculated to make men as safe in all treasonable practices as possible*, yet, I will satisfy you, and the Court, that in this case there have been produced three witnesses, each going to
prove

prove an overt act of the same treason—How dangerous and unwarranted then must it be, to endeavour to impress upon the public mind, that if tried in *Great Britain*, the Prisoners at the Bar, conceding the truth of the evidence given against them, could not be convicted.

I must trespass on you late as it is, to state the overt acts laid in the indictment, and the evidence adduced, as it applies to each; and if I should mistake or exaggerate I conjure the Prisoners and their Counsel to believe, that it was equally against my wish and intention so to do, and to set me right.

The first overt act states, that the Prisoners with others did assemble, meet, conspire, agree, and consult to stir up, raise, and levy rebellion and war, and to procure arms and ammunition for that purpose, and to procure numbers of armed men to rise; the 2d is, that they did conspire to depose the King; the 3d is, that they did conspire to overturn by *force* the Government of the country. You will recollect that it has been proved, that *Henry Sheares*, upon his introduction to Captain *Armstrong* declined any communication, but in the presence of his brother *John*—that the traitorous communication was opened with *John*—that after a subsequent meeting *Henry* avowed his knowledge of that communication, and alleged in excuse of his absence, a necessary attendance upon one of the Committees. You will recollect that his presence and participation in many of the interviews between his brother *John* and Captain *Armstrong* were proved—and those facts the Court will inform you, involve and connect him with the acts of *John*. The Proclamation—The *Io Triumphe* of that sanguinary and successful rebellion which they had anticipated, was proved, and not controverted, to be of the hand-writing of *John Sheares*—and furnishes, with the testimony of Captain *Armstrong*, clear and decisive evidence of the three first overt acts. Upon the 16th of *May*, Mr. *John Sheares* told him, that a rising would soon take place—the Proclamation considers it as complete—that he waited only for the *Executive* to fix the day, for that an *Home* exertion would be made, not waiting any longer for *The French*, words all arguing a foregone conclusion, and coercing the belief of the Jury of the three first overt acts, and their too obvious tendency.

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(The learned counsel then proceeded to state the several other overt acts, and with great strength and clearness, apply the evidence given in support of each, but he particularly dwelt upon the 16th overt act, which is,) that they did assemble to take and receive returns, accounts, numbers, and names of officers, men and arms, to be employed in raising and levying war and rebellion against the King, and did in writing set down the said returns, accounts, numbers, and names with an intent that they should be employed in raising and levying war against the King.

To this overt act it appears to me that there is the evidence of *Kearney*, as well as to the three first overt acts—You will recollect, how reluctantly he gave it; though he confessed that he himself was a Colonel in the rebel army of *United Irishmen*—that he did in the month of *May* last attend a meeting of the officers of that army, and that *John Sheares* was present: that returns of men were made from different quarters—and that these numbers were written down, received and taken. This evidence is strongly concurrent with the evidence of Captain *Armstrong* as a former and seemingly unconnected transaction. Captain *Armstrong* has told you that on the 20th of *May*, *John Sheares* produced a letter, on the back whereof, were entries and memorandums of men, arms and ammunition made from different quarters and under different names—and on the 21st of *May*, *John Sheares* was apprehended and a letter corresponding with such a description found upon his person. The evidence of *Kearney* is strongly concurrent also with the intended proclamation, proved to be of the hand-writing of *John Sheares*—This proclamation furnishes such strong, indeed conclusive evidence, as to preclude the necessity of comment or observation—The spirit and contents of it will not admit of aggravation—Black will not take any other colour.

Thus, gentlemen, I may say, that there is evidence for your consideration to every overt act charged—But the improbability of the evidence of Captain *Armstrong* has been pressed upon your consideration—You will recollect the manner in which his connection with the Prisoners of the bar commenced—you will recollect that it has been proved by Captain *Clibborn*, that he had previously apprised him and Colonel *L'Estrange* of the application to him, and that he acted under their approbation, and that by his conduct he has been the Saviour of his country from the ruin of which
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the Prisoners promised him that glorious distinction.—You will recollect that the cross examination of Captain *Armstrong* by the Prisoners counsel tended to prove him of republican inclination, and that some of the witnesses of the Prisoners tended to make the same impression.—Did not the supposed inclination of Captain *Armstrong* point him out as a proper instrument of their conspiracy?—Did not the Prisoners at the outset of the connection assume a knowledge of his principles, and to further them most effectually, propose the seduction of the *King's County Regiment*, the seizing of the camp of *Lehaunstown*, and an active application to the non-commissioned officers and privates of the Roman Catholics, as most likely to be operated upon?—thus calling in the weakness and bigotry of religion in aid of this horrid conspiracy!—But see how the written evidence corroborates the testimony of Captain *Armstrong*—The proclamation proves it in the gross—The letter found upon the person of *John Sheares* on the 21st of *May*, corresponds with a degree of exactness with the letter shewn by him to Captain *Armstrong* on the 20th of *May*—The note of introduction to Serjeant *Connor*—of a Captain to his Serjeant written with a suspicious obscurity and bespeaking confidence for him and procuring a pass for him to town, on the next day. The letter proved to have been written by *John Sheares* and directed to Captain *Armstrong* found on the 21st of *May* in the house of *Cormick*, since a fugitive for treason, written with a suspicious obscurity—bespeaking his confidence in Mr. *Cormick* and intimating that Serjeant *Connor* did not come to town as was expected—Recollect that it was proved that *John Sheares* declared he was to go down to organize *Cork*—This letter was therefore necessary to bring Captain *Armstrong* and *Cormick* together—Recollect that *John Sheares* was arrested in the house of *Lawless*—and that *Lawless* is also a fugitive for treason—Can this mass of evidence be done away in the opinion of a discriminating Jury, by the ridiculous attempts which have been to impute atheistical opinions (denied upon his oath) to Captain *Armstrong*.

If his evidence were to be contradicted, why not produce *Byrne*—who introduced them to each other?—Why not *Lawless*, who was introduced by *John Sheares*—to Captain *Armstrong*?—They were witnesses competent for the Prisoners, but they would not venture to resort to them.

Some

Some of the witnesses of the Prisoner have declared that they never communicated the subject of their evidence, and yet as if by a miracle, the same questions were put to Capt. *Armstrong* on his cross examination as to them on their direct.

To delay you with observations upon the evidence, impeaching Mr. *Armstrong*, would argue, that it either had or merited to have any weight with you—I am much mistaken if it has—judge of it by the substance and manner in which it was given.

Many reputable gentlemen were called to the moral character of the Prisoners, and some spoke highly of it, but there was not to my recollection a question hazarded as to their loyalty, or principles of government, save one by the Prisoner *John Sheares*—the answer to which, to say no more, can not serve him—If it was a case, that could be affected by such puny circumstances, it might have been wise to stop in the enquiry.

I have trespassed on you too long, and shall only add, that if upon this evidence you can have a rational doubt, you will of course acquit the Prisoners—But if you do not entertain such a doubt, I conjure you by your oaths, that uninfluenced by terror, or apprehension of any kind, you do, however bitter it may be, discharge your duty to yourselves, your country and your God.

Mr. *Henry Sheares*. My Lord, I wish to say a word.

Lord CARLETON. It is not regular after the Counsel for the Crown have closed. I asked you at the proper time, you then declined. However, go on.

Mr. *Henry Sheares*. My Lord, after the able and eloquent defence which has been made for me by my counsel, it would ill become me to add any thing to it. But there is one part of it, which appears to me, not to have been sufficiently dwelt upon. It is respecting that paper. I protest most solemnly, my Lord, I knew nothing of it, to know of it and leave it where it was when the magistrate came is a folly so glaring, that I cannot be supposed to have been guilty of it. When the Alderman rapped at the door, I asked, what was the matter—after he was admitted, he said he wanted my papers; I told him they were there. My Lords, is it possible, I could commit myself and all I hold dear, by so egregious an act of folly—Having the dearest sources of happiness around me, should I sacrifice them, and myself, by leaving such a document in an open writing box?

My

My Lords, I beg your Lordships' pardon. I thank you for this indulgence:—It would be irregular for me to expatiate further.—The evidence of Captain *Armstrong* is one of the most ingenious, and malicious fabricated stories, with respect to me, I ever heard of.—My Lords, I should think, I could not be legally implicated by any paper, found in that way.

Lord CARLETON. *Gentlemen of the Jury,* The indictment in this case imputes to the Prisoners at the bar crimes of the utmost magnitude, in which the Prisoners have the most important concern; in which justice is equally interested;—on the one hand, these crimes go to the very existence of the state; on the other, the consequences of conviction are of the most penal nature. You will therefore, determine impartially between the public, which calls for the prosecution of real offenders, and the Prisoners, who are intitled to an acquittal, if they are innocent; and I am sure you will decide this case, without being influenced, either by the present critical situation of the country, or the pathetic address to your passions which you have heard from the Prisoners counsel.

Gentlemen, I will state to you, as well as I can from the weak state in which I am, after so long a sitting, the law respecting High Treason, so far as may be necessary for the decision of this case; the overt acts contained in the indictment upon which the Prisoners have been given in charge to you, and the evidence which has been given in support of them; and I shall then trouble you with a few observations.

The indictment charges two species of treason, compassing the death of the King—and adhering to his enemies; in indictments of this kind, it is necessary to set forth some overt acts; they are the steps, means, or measures taken in prosecution of, and to effectuate the intent and design proposed; if any of them be properly laid and proved, it will warrant a conviction, although the evidence be not sufficient to support the others.

As to the first species of treason, I shall state what I take to be the law, as clearly laid down by authors of great legal ability, clear understanding, approved integrity, and constitutional attachment; and in laying down the law as I shall state it from these venerable authors, I shall do it very differently from the way in which it has been represented by the learned counsel for the Prisoners. They lay

it down, as is very often done in prosecutions of this nature, more from their own imagination than with a view to those venerable authors, to whom the bench are obliged to look for information. As to the first species of treason, the compassing and imagining the death of the King; the life of the King, as the chief magistrate, is so linked and interwoven with the existence of the state, that if it be taken away, convulsions must arise destroying every bond of society, levelling all order, annihilating all liberty and property, rooting out our noble constitution, and overspreading the land with desolation;—the law therefore with anxious solicitude for his protection, renders the intention to destroy the King as criminal as its accomplishment would be, provided such intention is acted upon and any measures are adopted for carrying it into execution; every stroke levelled at the King's person aims destruction at the public tranquillity, and the guilty purposes of the mind are placed in the same degree of guilt as if they were compleatly carried into execution, as soon as any measures have been taken to render them effectual: the care which the law has taken of the personal safety of the King is not confined to acts directly aiming at his life, it is extended to every thing wilfully and deliberately done or attempted, whereby in the natural course of things, or in the common experience of mankind, his life may be endangered; and the measures taken in such cases may at the same time be evidence and overt acts of compassing his death.

Among the cases cited by authors of the highest reputation, the following have been considered as law: Forming conspiracies to usurp by force and in defiance of the authority of parliament, the government of the kingdom, to destroy its constitution and in so doing to destroy the monarchy; or to levy war against the King's person, thereby to depose him or otherwise to depose his Majesty, are overt acts of compassing the King's death within the stat. of 25 of *Edw. 3.* So is the holding consultations or entering into agreement, or advising, soliciting, or persuading others for any such purposes, or assenting to such purposes. The law is the same as the entering into any other measures to effectuate any of said purposes. The moment the power of the government is usurped, the King is in effect deposed; he is bound by the duty of his situation to resist such attempts, even at the peril of his life, and the several acts which I have mentioned whereby his life may

be endangered, have been deemed under the sound construction of the statute, and upon principles of substantial political justice, overt acts of compassing his death. It is not material when the overt act is a conspiracy to depose the King, or the levying or conspiring to levy direct war against his person, involving an intention to depose him, whether the person charged with compassing the King's death has in his contemplation all the mischief which may flow from the acts which he meditates : if the death of the King is in the nature of things, and the common experience of mankind, likely to result from the measures taken and the acts done, it is sufficient ; and the act done is considered as done in pursuance of an intent to compass the death of the King.

This, gentlemen, is the unanimous opinion of the Court, and the law in this respect does not rest upon our authority only. It was the unanimous opinion of the judges who sat on the trials of *Tooke* and *Hardy* : Adhering to the King's enemies is likewise an overt act of compassing the King's death, it manifests a design to depose him. He is bound to support the law and the constitution, and to defend the kingdom against his enemies, and in the contest his life may be put in hazard.

Gentlemen, an attempt has been made, for the first time (depending merely upon the ingenuity of counsel) to contend, that the king not having personal residence here, a conspiring to depose him, or a levying of war against his person, cannot be overt-acts of compassing his death : if we were to adopt that opinion, we must expunge from the 25 of Edw. III. one of the most important provisions. We must go against the concurring opinions of all our predecessors, who have considered the law of both countries in this respect, as exactly the same ; and that as applicable to *Ireland*, to levy war against the king's person, or conspiring to levy such war, or otherwise to depose the king, are overt-acts of compassing his death, whether he be within this country or not ; and therefore it is the unanimous opinion of the bench, that there is no distinction between the law of *England* and *Ireland* on this point. Gentlemen, another observation has been made, and pressed upon us ;—when I take notice of these observations, in which I do not agree, I do not mean to find fault with the counsel ; it is my respect for them which induces me to answer their arguments. It is said, that in treason, two witnesses are necessary

fary here; that they were necessary by the common law of England, and that the common law being the same in both countries, two witnesses are necessary here; that the common law is the same in both countries, I adopt; but as to this point of two witnesses being necessary in treason in this kingdom, with the concurrence of the bench, and the opinion of several judges of this country given in some of the late cases here, I avow, that two witnesses are not necessary; they are necessary in *England* by a statute, which does not prevail in the same extent here. It is very true, that *Lord COKE* was of a different opinion, as to the common law of England; however, *Lord HALE* and Mr. *Justice FOSTER* did not agree with *Lord COKE*, and Mr. *Justice FOSTER* says, it was the received opinion, that *Lord COKE* was wrong.

Another observation has been made, that that which constitutes one species of treason cannot be laid as an overt-act of others. However, the contrary opinion is the settled law of *England*, and *Lord COKE* was wrong in his opinion in that respect as well as the other. Gentlemen, I have stated thus much as applicable to the first count in the indictment. The 2d count is for adhering to the king's enemies within the realm; that is also treason within the statute of *Edw. III.* Aid or comfort afforded to the king's enemies within the realm, or elsewhere, whereby they may be strengthened, or better enabled to carry on war, armaments, or enterprizes against us, or to defend themselves, or whereby the king's hands might be weakened, are acts of adherence to his enemies; any act whereby the relative war-power of the enemy might be promoted, if done with that intent, is a treasonable adherence, though the attempt should prove abortive, and not produce the intended effect; because the party has done all in his power to render it effectual; and, gentlemen, wisely the law is so; for traitors would escape, if no punishment could be inflicted while the government existed; and it would be too late to attempt it when the government was overturned.

No adherence to the rebels, now in arms against the king and his government, will constitute treasonable adherence within the statute: under this indictment, upon this charge the overt-acts must be done, with the intent and design of assisting the *French*, and must be so considered by you.

Notoriety

Notoriety is sufficient evidence of war, and of the *French* being enemies to the king, and his government.—Gentlemen, I shall now state the overt acts, which are set forth in the indictment, that you may see, how far you think all or any of them are established. I shall also state the evidence, and I shall afterwards state the object which you are to look at in a narrow point of view for your consideration, that your attention may not be distracted.

[Here his lordship enumerated the several overt acts in the indictment, classing them as they related to the same subjects, and then proceeded.]

Gentlemen, the two prisoners stand indicted, as concerned in these several acts; and there has been evidence, if you give credit to it, that implicates them both in a conspiracy; and that having been done, every act committed by one is evidence against the other, to the extent of ascertaining the nature of the conspiracy; but it is always in such cases open to the jury to separate the prisoners, and to say how far guilt shall ultimately be confined to one, or extended to both, by the particular evidence in the cause; therefore, gentlemen, in attending to the evidence in this case, you will consider it with its different relative bearings to the two prisoners at the bar. Gentlemen, the first witness produced was *John Warnford Armstrong*, he deposed—[*Here his Lordship minutely recapitulated the evidence of this Witness, and observed*].—In stating this evidence, in order to make the observations thereon, which I have submitted to your consideration, I have taken it for granted, that it is true; leaving it however to you finally to decide upon the credit of the Witness, attempted to be impeached, as he has been, and after the observations which you have heard from the Prisoners counsel.

[His Lordship then proceeded to recapitulate the rest of the evidence, observing upon it as he stated it, and particularly pointing to the consideration of the Jury such parts of it as tended to corroborate the evidence of *Armstrong*, and when he came to that part relative to the paper found by Alderman *Alexander*. He mentioned that it was found in a writing box which lay upon a table, open and unlocked, and that it did not appear in evidence whose property that writing box was or to which of the prisoners the house belonged.]

Mr.

Mr. *John Sheares*. I beg your Lordship's pardon; it was in *my* writing box that paper was found.

Lord CARLETON. I could not call upon the Prisoner for any admission of that kind, and I wish the case may be determined on the evidence alone. This paper was in the hand-writing of *John*: no evidence was offered to disprove his hand-writing to it. It does not appear by express evidence, which of the Prisoners was to be deemed as having it in his possession; as against *John*, who had written, it is of more weight than against *Henry*; but as against the latter, it is of weight as being the act of one of the conspirators, ascertaining the nature and objects of the conspiracy, nevertheless as to him leaving the discussion, as to the extent of his guilt, open. Gentlemen, this paper wants one circumstance of additional strength in not being published; but notwithstanding it is very powerfully operative in the cause, as corroborative of the other evidence, and as marking the intention of the party, whom it is to affect. A spirit of massacre and rebellion, an intent to destroy the existing government, and to usurp the sovereign power of the state, a hatred to the connection of *Ireland* with *Great Britain*, settled plans of attacks to be made on the King's government and a system of terror and rewards are strongly expressed; in short, the paper speaks so plainly and strongly, that it is only necessary for you to hear it read without my remarking upon the different parts.

[After his Lordship had gone through the whole of the evidence, he said.]

Now, gentlemen, a great deal has been urged, and you must draw your attention to this subject;—much depends upon the credit which you give to the testimony of Captain *Armstrong*: his testimony is sought to be impeached, by shewing, that he does not believe in a Supreme Being, and in a future state of rewards and punishments. He has sworn that he does believe in a Supreme Being, and in a future state of rewards and punishments; though it has been sworn he declared the contrary. If he does not believe in a Supreme Being, and a future state of rewards and punishments, his evidence, to be sure, ought to go for nothing. Whether he has made those declarations, which have been imputed to him, and if he did, whether he made them seriously, and communicating his real opinions,

ons, or as matter of idle conversation (for he has been described to you as giddy and inconsiderate in his expressions,) you are to determine. You will also consider the circumstances of corroboration, which have appeared: he gave an account of each meeting, as it was held, in that respect, the evidence of *Clibborn* supports and fortifies his testimony, and in several parts of his testimony, the papers establish his credit in a very *strong* manner. As I more particularly pointed out to you when I stated those papers to you. The evidence of *Kearney* also has the same tendency, especially when the memorandum is taken into consideration; on the other hand, as a further ground offered to impeach him, there is a circumstance to be considered, namely, the manner of his getting admission to the Prisoners; it has not been pressed upon you, that he was to be considered as an accomplice; but that he went as a spy, for the purpose of discovering the conduct of the Prisoners. You will take that into your consideration, and see what influence it may have upon your minds as to his credit.

Gentlemen, I stated all the different overt acts intimating, that I might afterwards suggest my ideas as to the object of your inquiry upon a shorter scale. With regard to compassing the death of the King, if meetings were held, or conspiracies formed to overthrow the government, to usurp the sovereign power of the state, to depose the King. In my apprehension, the evidence, if you believe it, and are satisfied such was the object, is sufficient to establish the charge against the Prisoners. Supposing the evidence satisfactory to your minds to establish the fact of a scheme formed to levy war against the King, this agitated war doubtless would (if levied) have been in construction of law, express direct war against the King's person, and an overt act of compassing and imagining his death. It was to be a war, referring to foreign aid, and invasion, and in which, if the *French* armies came in time, they might be participators, but which, for special reasons was to precede the arrival of the *French*; the camp of the King's troops was intended to be taken by storm, or surprize, risings were to take place in various parts of the kingdom, and at periods which were to have a certain relation to each other, the King's artillery, his representative and council, and government to be seized, and taken into the hands of the insurgents, all those circumstances will be combined

combined together by you, and if you believe that the Prisoners embarked in those designs, as stated by the evidence, the object, in truth, will then appear to be to overthrow the government, to create a governing power in themselves, and the consequence would be the deposition of the King, a clear overt act of treason, in compassing his death. If therefore, I say, you believe the evidence, as establishing the conclusions which I have mentioned, it is sufficient to maintain the first charge.

If you are satisfied upon the first count, that the facts which I have just now alluded to, have been established against both the Prisoners, you will find them both guilty, if they are established against one only, you will find him guilty, and acquit the other upon that count, and if gentlemen, you entertain any rational doubt, not merely a capricious doubt, but the doubt of sensible men, then, in a capital case, you will lean in favour of life.

With regard to the second count for adhering to the King's enemies, I have stated to you, that it is of the essence of that charge, that the act done must be with the imputed intent of aiding the King's foreign enemies. The evidence is a conspiracy to raise war, and open rebellion, to take the camp, city of *Dublin*, the castle, the Lord Lieutenant and Privy Council :—these measures were to be carried into execution at a later period, but a scheme appears to have been framed to bring them forward, from the anxiety of the people involved in the conspiracy, for their friends who were to be tried in *Kildare*, at the then approaching assizes ; therefore an intention was professed of having the rising at an earlier period, than was first expected, and this was communicated to Captain *Armstrong* by the Prisoner *John Sheares*, under the pressure of events, as he stated, which prevented them from waiting any longer, the arrival of the *French*, you are therefore to consider, whether you can infer, that this rising was acted upon with a view to aid the *French*. That intent is absolutely necessary. It is matter of notoriety, that the *French* have been upon the coast the winter before the last, and might possibly be expected again—You must on this count be satisfied of this intent.

Mr. Justice CROOKSHANK. Gentlemen of the Jury. Lord CARLETON has so fully and accurately stated to you the evidence and the law arising upon it, that I think it unnecessary

unnecessary to trouble you further than by expressing my entire concurrence in what he has said.

Mr. *Baron SMITH. Gentlemen of the Jury.* It would be severe at this hour to detain you by any length of observation, and indeed it is rendered unnecessary by the manner in which the case has been laid before you by *Lord CARLETON*, and I have only to say, that I concur with him in every respect both as to the law and the fact.

The Jury then asked for the papers, which with the Prisoners consent, were taken to the jury-room.

The Jury then retired for 17 minutes, and brought in a verdict, finding both the Prisoners—GUILTY.

As soon as the verdict was pronounced, the Prisoners clasped each other in their arms.

It being now near eight o'clock on *Friday* morning, the Court adjourned to three o'clock.

When the Court met at the hour appointed.

The ATTORNEY GENERAL moved that *Henry Sheares* and *John Sheares* might be brought up for the judgment of the Court.

COURT. Let them be brought up.

Mr. M'NALLY. My Lords, None of the Counsel assigned for the Prisoners attend, but myself. I have however a point to mention, which I would rather state in the absence of the Prisoners, (however singular) least, if I am not founded, it should fill them with false hopes. I have compared this indictment with that in *Stone's* case; there it was stated, that a war existed, as it does here; but there was an averment which is not to be found in this indictment.—“ That a war had been carried on and prosecuted, “ &c. to wit. at *Hereford, in the County of Middlesex*”—laying a *venue* :—that is not done here. There is a plain reason for it: The words of the statute are if a man shall adhere to the King's enemies “ within the realm or elsewhere.” Therefore the indictment should state where the adherence was. I shall not trouble your Lordships further—if I am wrong, I have to apologize, and have only
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to attribute my interference to the zeal which I feel for my client.

Lord CARLETON. You have been extremely proper in mentioning it in the absence of the Prisoners, because they cannot avail themselves of the objection; for if that whole count were bad, yet the other count would be sufficient to maintain the judgment.

The Prisoners were then brought to the Bar.

The *Clerk of the Crown* read the indictment, and asked them what they had to say, why judgment of death and execution should not be awarded against them according to law.

Mr. Henry Sheares. My Lord, as I had no notion of dying such a death as I am about to meet, I have only to ask your Lordship for sufficient time to prepare myself and family for it.—I have a wife and six children, and hope your humanity will allow me some reasonable time to settle my affairs and make a provision for them.—(*Here he was so overwhelmed with tears, that he could not proceed.*)

Mr. John Sheares. My Lord, I wish to offer a few words, before the sentence is pronounced, because there is a weight pressing upon my heart much greater than that of the sentence which is to come from the Court. There has been, my Lord, a weight pressing upon my mind from the first moment I heard the indictment read upon which I was tried; but that weight has been more peculiarly and heavily pressing upon my heart when I found the accusation in the indictment enforced and supported upon the trial; and that weight would be left unsupportable, if it were not for this opportunity of discharging it:—I should be insupportable, since a verdict of my country has stamped that evidence as well founded. Do not think, my Lords, that I am about to make a declamation against the verdict of the Jury, or the persons concerned in the trial; I am only about to call to your recollection a part of the charge, which my soul shudders at; and if I had not this opportunity of renouncing it before your Lordships and this auditory, no courage would be sufficient to support me. The accusation, my Lords, to which I allude, is one of the blackest kind, and peculiarly painful, because it appears to

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Have been founded upon my own act and deed, and to be given under my own hand. The accusation of which I speak, while I linger here yet a minute, is “that of holding out to the People of *Ireland* a direction to give no quarter to the troops fighting for its defence.” My Lords, let me say this—and if there be any acquaintances in this crowded Court—I will not say, my *intimate friends*, but *acquaintances*, who do not know that what I say is truth, I should be reputed the wretch, which I am not—I say, if any acquaintance of mine can believe, that *I could* utter a recommendation of giving no quarter to a *yielding and unoffending foe*, it is not the death that I am about to suffer, which I deserve—no punishment could be adequate to such a crime. My Lords, I cannot only acquit my soul of such an intention, but I declare in the presence of that God, before whom, I must shortly appear, that the favourite doctrine of my heart was—*That no human being should suffer death, but where absolute necessity required it.*

My Lords, I feel a consolation in making this declaration, which nothing else could afford me; because it is not only a justification of myself, but where I am sealing my life with that breath, which cannot be suspected of falsehood, what I say, may make some impression upon the minds of men, not holding the same doctrine. I declare to God, I know no crime but assassination, which can eclipse or equal that of which I am accused. I discern no shade of guilt between that, and taking away the life of a foe, by putting a bayonet to his breast, when he is yielding and surrendering. I do request the Bench to believe that of me—I do request my country to believe that of me—I am sure God will think that of me.

Now, my Lords, I have no favour to ask of the Court: my country has decided, that I am guilty, and the law says, that I shall suffer: it sees that I am ready to suffer.

But, my Lords, I have a favour to request of the Court that does not relate to myself. My Lords, I have a brother, whom I have ever loved dearer than myself; but it is not from any affection for him alone that I am induced to make the request. He is a man and therefore, I hope, prepared to die, if he stood as I do, though I do not stand unconnected, but he stands more dearly connected.—In short, my Lords, to spare your feelings and my own, I do not pray that I should not die;—but that the husband, the father, the brother and the son, all comprised in one person, holding

holding these relations, dearer in life to him than any other man I know;—for such a man, I do not pray a pardon, for that is not in the power of the Court, but I pray a respite for such time, as the Court in its humanity and discretion shall think proper. You have heard, my Lords, that his private affairs require arrangement.—I have a farther room for asking it: if immediately both of us be taken off, an aged and revered mother, a dear sister, and the most affectionate wife, that ever lived, and six children will be left without protection, or provision of any kind.—When I address myself to your Lordships, it is with the knowledge you will have of all the sons of our aged mother being gone. Two have perished in the service of the King; one very recently.—I only request, that disposing of me with what swiftness, either the public mind or justice requires, a respite may be given to my brother, and that the family may acquire strength to bear it all.—That is all I wish—I shall remember it to my last breath, and I will offer up my prayers for you to that Being, who has endued us all with sensibility to feel. This is all I ask. I have nothing more to say.

Lord CARLETON. In the awful duty imposed on me no man can be more sensibly affected than I am, because I knew the very valuable and respectable father and mother from whom you are both descended; I knew and revered their virtues; one of them, happily for himself, is now no more; the other, for whom I have the highest personal respect, probably by the events of this day, may be hastened into futurity. It does not rest with us, after the conviction which has taken place, to hold out mercy; that is for another place; and I am afraid, in the present situation of public affairs, it will be difficult to grant even the indulgence which you, *John Sheares*, so pathetically request for your brother; with respect to one object of your soliciting time for your brother, unfortunately it could be of no use, because by the attainder he will forfeit all his property real and personal; nothing to be settled will remain.

It cannot be too much lamented, that two gentlemen, well educated, of good birth, respectable descent, and considerable talents, should be involved in a conspiracy, that might have spread desolation over the kingdom and brought us all to ruin. This country has enjoyed as much freedom and security in the possession of every thing that
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was dear and valuable, as was consistent with a stable and effectual government, where a part of our natural liberty is taken away in order to secure the rest ; his Majesty has been celebrated for his mild and gracious reign, as a strict observer and protector of our laws, our rights, and our religion. His reign has been a continued series of liberal concession to the people of this country, calling upon them to make a suitable return of fidelity, attachment and allegiance. The conspiracy, in which you have been involved, proposed as one of the means of effecting its object to invite a foreign enemy into this kingdom, and to subject this country to foreign yoke ; the conspiracy has been remarkable for the system, perseverance and art with which it has been conducted, and for the wide diffusion of its principles. Other revolutions have had for their object a change of Monarch or an alteration of the constitution. But this conspiracy proposed the destruction of the higher orders of the state and an almost general massacre. Those who formed this system so artfully carried on, endeavoured to make the people of the country bad *men*, and thereby to make them more likely to become bad *subjects*. The conspiracy, of which you have been convicted, had for its object, the destruction of the monarchy and of the constitution, and to substitute anarchy, the worst of all tyrannies in their place ; and as far as we can collect from the intelligence received upon the subject, to annihilate all religion, and morality, without having any substitute, save the unrestrained licentiousness of profligacy and vice ; and this was done, when a foreign enemy had threatened to invade this country—had denounced its destruction, and had avowed an intention to erase its name from the list of nations.

When you meditated the destruction of our laws, religion, and constitution, it is surprising, you were not checked and restrained in the attempt, by the danger attending yourselves ; or by adverting to the extensive mischiefs which must have necessarily ensued.

Let me, with great earnestness and charity, request you to reflect upon the enormity of your guilt, and that you will call to your minds that effusion of human blood which has already taken place, and that incalculable mischief which may follow a deliberate system of massacre and devastation. I could wish, that the manifesto read in evidence against you had contained nothing sanguinary ; but recollect, that in that manifesto, it was declared, that no person
should

should be spared, who did not join the rebellion prior to the attack.

Mr. *John Sheares*. I beg pardon my Lord, that was the evidence of Captain *Armstrong*—it is not part of the paper.

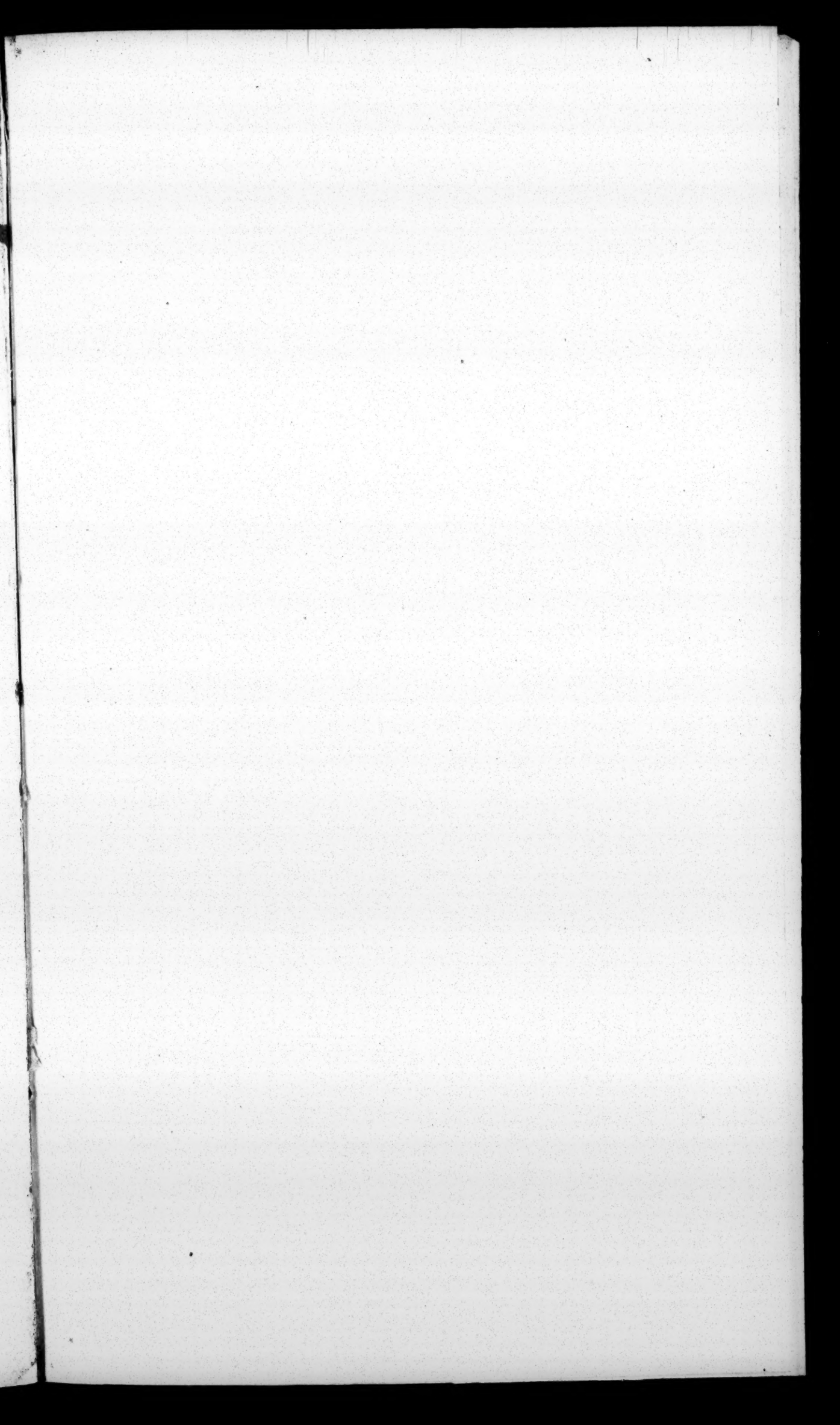
Lord CARLETON. I have not the paper here, but that evidence was given against you. It now falls to my lot, and I never felt more pain than I do upon the present occasion, to pronounce that sentence, which the law has provided against persons committing crimes of such magnitude, as aim at the destruction of society. It is a sentence of great horror, but such as the wisdom of our ancestors ordained as a guard round the person of the King, and as a fence about that noble Constitution, which was acquired by our ancestors, and which, I trust, we will transmit unimpaired to posterity, in order to hold out terror to those who are disposed to do ill, and to afford protection to the loyal part of the people of this country.

His Lordship then pronounced sentence.

Mr. ATTORNEY GENERAL. My Lord, I could, with great sincerity, allow any indulgence of time, if the circumstances of the country could by possibility admit of it. But my Lords, I have a great duty to discharge, and must pray that execution may be done upon the Prisoners tomorrow.

Court. Be it so.

The Prisoners were executed pursuant to their sentence on *Saturday*, 14th of *July*, 1798, at the Front of the Prison in *Green-street*.



20. d. 3.